Supreme Court, U.S.
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CASE NUMBER _____

SUPREME COURT
OF THE
UNITED STATES OF AMERICA
OCTOBER TERM OF 1994

LOUIS V. MANGRUM, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, **PETITIONERS**

VS.

COMMONWEALTH OF KENTUCKY, **RESPONDENT**

Petition For Writ Of Certiorari
From An Appeal to The Court
Of Appeals Of Kentucky

PETITION FOR WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

1. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, DUE PROCESS OF LAW, A FAIR TRIAL, AND BENEFIT OF COUNSEL, BY AFFIRMING THE JUDGMENTS OF THE GRAVES CIRCUIT COURT OF KENTUCKY IN OVERRULING THEIR MOTIONS TO SUPPRESS THE EVIDENCE, EMBODIED THEREIN, ON THE BASIS THE EVIDENCE WAS OBTAINED BY AN ILLEGAL STOP DUE TO LACK OF PROBABLE CAUSE AND ALSO IN VIOLATION OF THE OMNIBUS CRIME CONTROL ACT AND SAFE STREETS ACT OF 1968, 18 U. S. C. ARTICLES 2510 THROUGH 2520 UNDER THE EVIDENCE AND FACTS IN THEIR CASES?

2. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, DUE PROCESS OF LAW, A FAIR TRIAL, BY AFFIRMING THE JUDGMENTS OF THE GRAVES CIRCUIT COURT OF KENTUCKY BY JOINING THEIR CASES FOR TRIAL OVER THEIR OBJECTIONS EMBODIED THEREIN?

3. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, DUE PROCESS OF LAW, A FAIR TRIAL, IN AFFIRMING THE JUDGMENTS OF THE GRAVES CIRCUIT COURT OF KENTUCKY WHEREIN THE ORDERS OVERRULING THEIR MOTIONS FOR A MISTRIAL WERE EMBODIED. UNDER THE FACTS IN THEIR CASES?

4. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, DUE PROCESS OF LAW, A FAIR TRIAL, AFFIRMING THE JUDGMENTS OF THE GRAVES CIRCUIT COURT OF KENTUCKY IN DENYING THEIR MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICTS AND MOTIONS FOR NEW TRIAL EMBODIED THEREIN UNDER THE FACTS AND EVIDENCE IN THEIR CASES?

5. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, RIGHT OF PRIVACY, DUE PROCESS OF LAW, A FAIR TRIAL, IN AFFIRMING THE JUDGMENTS OF THE GRAVES CIRCUIT COURT OF KENTUCKY IN OVERRULING THEIR MOTIONS TO QUASH THE INDICTMENTS EMBODIED THEREIN, UNDER THE FACTS IN THEIR CASES?

6. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, RIGHT OF PRIVACY, DUE PROCESS OF LAW, A FAIR TRIAL, IN AFFIRMING THE JUDGMENTS OF THE GRAVES CIRCUIT COURT OF KENTUCKY UPHOLDING THE METHOD ADOPTED BY THE POLICE, ON MERE SUSPICION PROCEED TO UTILIZE A PAID INFORMER AND AN UNDERCOVER OFFICER, BOTH WIRED FOR SOUND, TO FLAG DOWN THE PETITIONER, PERRY JACKSON, WHEN IN FACT THEY WERE LOOKING FOR THE PETITIONER, JERRY JACKSON, AND ASK HIM FOR CRACK COCAINE AND PURSUED TO FOLLOW HIM TO THE ROGERS LAUNDRY MAT AND GOT INTO THE AUTOMOBILE HE WAS, WITH

PERMISSION, DRIVING OWNED BY THE PETITIONER, VERNON JACKSON, ON FEBRUARY 15, 1992, AND PURCHASED A $20.00 ROCK OF CRACK COCAINE FROM EACH THEREBY MIXING THE SUBSTANCES OBTAINED FROM SAID PETITIONERS, AND LATER ON FEBRUARY 18, 1992, PROCEED TO GO TO THE HOME OF THE PETITIONER, VERNON JACKSON, AND PURCHASE AN ALLEGED $50.00 ROCK OF CRACK COCAINE FROM HIM AND HIS SON AND PETITIONER, JERRY JACKSON, WITH THE NAME OF THE PETITIONER, PERRY JACKSON, BEING INSERTED IN THE BAG CONTAINING THE $50.00 ROCK AND THE NAMES OF THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, BEING PUT IN THE BAG CONTAINING THE TWO $20.00 ROCKS WITH BOTH BAGS BEING MAILED TO A LABORATORY FOR TESTING WHERE BOTH WERE TESTED TO SEE IF THEY CONTAINED COCAINE BUT NOT TESTED TO SEE WHAT OTHER SUBSTANCES WERE IN THE BAGS OVER THE OBJECTION OF THE PETITIONERS EMBODIED THEREIN?

7. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, DUE PROCESS OF LAW, A FAIR TRIAL, IN AFFIRMING THE JUDGMENTS OF THE GRAVES CIRCUIT COURT OF KENTUCKY WHERE THE TESTIMONY OF SEPARATE PAID INFORMERS AS TO EACH OCCASION AND THE TESTIMONY OF THE SAME UNDERCOVER OFFICER ON BOTH OCCASIONS, AND ALL OTHER OFFICERS LISTENING TO THE EVENTS WITH ALL OFFICERS AND THE COMMONWEALTH ATTORNEY TO RECEIVE MONETARY BENEFITS BY FORFEITURE, WAS CONTRADICTORY, WITH THE COMMONWEALTH ATTORNEY ADMITTING DISCREPANCIES, IN OVERRULING SAID PETITIONER'S MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT BECAUSE SAID TESTIMONY STANDING ALONE WITHOUT ANY EVIDENCE OBTAINED BY THE SEARCHES AT THE TIME OF ARREST OF THE THREE PETITIONERS,

INCLUDING THE SEARCH OF THE AUTOMOBILE BEING DRIVEN BY THE PETITIONER, JERRY JACKSON, WITH NO SEARCH WARRANTS BEING OBTAINED AS TO THE SEPARATE HOMES OR ANY HOME OF EITHER OF THE PETITIONERS AS A MATTER OF LAW WAS TOO WEAK TO SUPPORT THEIR GUILT BEYOND A REASONABLE DOUBT OVER THEIR OBJECTION EMBODIED THEREIN?

8. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, DUE PROCESS OF LAW, A FAIR TRIAL, IN AFFIRMING THE JUDGMENTS OF THE GRAVES CIRCUIT COURT OF KENTUCKY OVERRULING THEIR MOTIONS FOR NEW TRIAL DUE TO THE TRIAL COURT CLOSING THEIR CASES WHEN A SUBPOENA ISSUED THE DAY BEFORE WAS OUTSTANDING FOR A WITNESS NAMED RAY LAWRENCE WHEN HIS NAME FIRST APPEARED AS BEING PRESENT AT THE TIME OF THE ALLEGED BUYS ON FEBRUARY 15, 1992, AND OTHERWISE, HURRYING THEIR COUNSEL THROUGHOUT THE TRIAL OVER HIS OBJECTION ON THEIR BEHALF EMBODIED THEREIN?

9. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, DUE PROCESS OF LAW, A FAIR TRIAL, IN AFFIRMING THE JUDGMENTS OF THE GRAVES CIRCUIT COURT OF KENTUCKY DUE TO PLAIN ERROR, BY THE RESPONDENT, COMMONWEALTH OF KENTUCKY, BY AND THROUGH ITS COMMONWEALTH ATTORNEY REPEATEDLY INTRODUCING INADMISSIBLE TESTIMONY WHICH CONSTITUTED UNCHARGED CRIMINAL ACTIVITY, BAD CHARACTER EVIDENCE AND IMPROPER OPINION EVIDENCE DESIGNED TO UNFAIRLY BOLSTER ITS CASE THROUGH WITNESSES WHO WERE WELL SCHOOLED ON SUCH MATTERS, POLICE

OFFICERS AND PAID INFORMERS, EVEN THOUGH THEIR COUNSEL FAILED TO OBJECT TO SAME?

10. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, DUE PROCESS OF LAW, A FAIR TRIAL, IN AFFIRMING THE JUDGMENTS OF THE GRAVES CIRCUIT COURT OF KENTUCKY REFUSING OVER THEIR OBJECTIONS AND TENDERED INSTRUCTIONS CONTAINING FOUR SEPARATE INSTRUCTIONS, TWO FOR THE PETITIONER, VERNON JACKSON, COVERING FEBRUARY 15, 1992 AND FEBRUARY 18, 1992, AND ONE EACH FOR THE PETITIONERS, PERRY JACKSON, COVERING FEBRUARY 15, 1992, AND JERRY JACKSON, COVERING FEBRUARY 18, 1992, TO INSTRUCT THE JURY SEPARATELY AS TO EACH PETITIONER EMBODIED THEREIN?

11. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, LOUIS V. MANGRUM, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, DUE PROCESS OF LAW, A FAIR TRIAL, A TAKING OF PROPERTY, AND COUNSEL BY CHOICE OF THE PETITIONERS, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, AND THE MAKING OF BOND BY THE PETITIONER, VERNON JACKSON, AND THE PAYMENT OF LEGAL FEES TO THE PETITIONER, LOUIS V. MANGRUM, BY SEVERING THE APPEALS OVER THEIR MOTIONS TO CONSOLIDATE ALL APPEALS AND DISMISSING THE APPEAL OF THE PETITIONER, LOUIS V. MANGRUM, BY EVADING THE CONSTITUTIONAL ISSUES ON THE BASIS IT WAS PREMATURELY APPEALED FROM THE JUDGMENT OF THE GRAVES CIRCUIT COURT OF KENTUCKY ENTERED IN CRIMINAL ACTION NUMBER 92-CR-030 WHICH WAS THE CASE OF THE PETITIONER, VERNON JACKSON,

AND FROM WHICH HE ALSO APPEALED, AS KRS 218A.460 (2) REQUIRES THE TRIAL COURT TO CONDUCT AN ANCILLARY HEARING ON PROPERTY FORFEITURE IF THE FORFEITURE IS CHALLENGED BY A PARTY OTHER THAN THE DEFENDANT OR COMMONWEALTH AND REQUIRING FURTHER ACTION BY THE GRAVES CIRCUIT COURT OF KENTUCKY, AS THE CONSTITUTIONAL ISSUES WERE RIPE FOR DECISION AT THE TIME PRESENTED IN THE APPEAL AND KRS 218A.460 (2) IS UNCONSTITUTIONAL AS APPLIED IN THESE CASES AND DENIED THEM A FAIR TRIAL ON THEIR APPEALS?

12. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, LOUIS V. MANGRUM, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, A DEPRIVATION OF COUNSEL BY CHOICE, IN SEVERING THE APPEALS OVER PETITIONERS' MOTIONS TO CONSOLIDATE ALL APPEALS AND DISMISSING THE APPEAL OF THE PETITIONER, LOUIS V. MANGRUM, WHICH WAS FROM THE SAME CASE THE PETITIONER, VERNON JACKSON, ALSO APPEALED FROM NUMBER 92-CR-030 IN THE GRAVES CIRCUIT COURT OF KENTUCKY, WHEN THE ONLY PURPOSE OF THE APPEAL OF THE PETITIONER, LOUIS V. MANGRUM, WAS IT WAS REQUIRED BY KENTUCKY LAW, FRANKLIN FISCAL COURT V. STEWART, KY. APP., *757* S. W. 2d. 194, 1988, TO ENABLE BOTH HE AND THE PETITIONER, VERNON JACKSON, TO OBTAIN THE DESIRED RELIEF FROM THE JUDGMENT OF THE GRAVES CIRCUIT COURT OF KENTUCKY, THEREBY EVADING THE CONSTITUTIONAL ISSUES RAISED IN THE GRAVES CIRCUIT COURT IN THEIR MOTION TO COMPEL RELEASE OF LIS PENDENS FILED BY THE PLAINTIFF ON APRIL 16, 1992, IN GRAVES COUNTY CLERK'S OFFICE ALONG WITH A DETERMINATION OF PRIORITY OF LIENS, AS PREMATURELY TAKEN FROM THE JUDGMENT OF THE GRAVES CIRCUIT COURT OF KENTUCKY AND MAKING FURTHER ACTION BY THE GRAVES CIRCUIT COURT OF KENTUCKY NECESSARY

AND DELAYING ACTION ON SAID ISSUES WHEREIN THE GRAVES CIRCUIT COURT OF KENTUCKY HELD KRS 218A.405 THROUGH KRS 218A.460 DID NOT VIOLATE THE ABOVE AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA WHEN IN FACT AS APPLIED IN THESE CASES THEY ARE UNCONSTITUTIONAL AS SHOWN BY THE CASES OF U. S. V. MICHELLE'S LOUNGE, 39 F. 3rd 684, 1994, AND AUSTIN V. UNITED STATES, 113 S. CT. 2801, 1993, ALL TO WHICH JUDICIAL NOTICE WAS APPLICABLE?

13. DID THE COURT OF APPEALS OF KENTUCKY DEPRIVE THE PETITIONERS, LOUIS V. MANGRUM, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON, OF THEIR CONSTITUTIONAL RIGHTS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, TYING UP MONEY FOR EXCESSIVE FINE, DUE PROCESS OF LAW, A FAIR TRIAL ON APPEAL, IN FAILING TO TAKE JUDICIAL NOTICE OF THIS COURT'S DECISION ENTERED ON JUNE 28, 1993, IN THE CASE OF AUSTIN V. UNITED STATES, 113 S. CT. 2801, HOLDING "THAT PAYMENT TO A SOVEREIGN AS PUNISHMENT FOR SOME OFFENSE" IS SUBJECT TO EXCESSIVE FINES AND COMES WITHIN THE PROVISIONS OF THE EIGHTH AMENDMENT MADE APPLICABLE TO THE STATES BY THE FOURTEENTH AMENDMENT, WHEN UNDER THE FACTS A FINE OF $10,000.00 FOR EACH OFFENSE BEING THE MAXIMUM FINE PERMITTED WITH THE PETITIONER, VERNON JACKSON, OWNER OF THE PROPERTY LEVIED ON, COMMITTED TWO OFFENSES MAKING THE TOTAL MAXIMUM FINES FOR BOTH OFFENSES THE SUM OF $20,000.00 WHEN THE PROPERTY LEVIED ON WAS ACCEPTED AS A PROPERTY BOND FOR $20,000.00 REQUIRING THE PROPERTY TO BE WORTH $40,000.00, FROM WHICH HE WOULD HAVE HAD ACCESS TO, WITH THE JURY NOT IMPOSING ANY FINE ON ANY OF THE OFFENSES INVOLVED IN THESE APPEALS AND THE GRAVES CIRCUIT COURT OF KENTUCKY ENTERING JUDGMENTS IN ACCORDANCE WITH THE JURY'S VERDICTS IN ALL CASES

EVEN THOUGH THE PETITIONERS DID NOT RAISE THE ISSUE BEFORE THE GRAVES CIRCUIT COURT OF KENTUCKY, THE COURT OF APPEALS OF KENTUCKY NOR THE SUPREME COURT OF KENTUCKY IN THEIR PETITIONS FOR DISCRETIONARY REVIEW BOTH OF WHICH WERE DENIED?

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REPORTS

There has not been any official or unofficial reports made in these cases.

PARTIES

The names of all of the parties to this action appear in the caption.

STATEMENT FOR GROUNDS FOR JURISDICTION

The Opinion And Order Dismissing was dated and entered by the Court Of Appeals Of Kentucky on September 23, 1994, and the Order denying the Motion For Discretionary Review of petitioner, Louis V. Mangrum, filed in the Supreme Court Of Kentucky was dated and entered on February 8, 1995, by the Supreme Court Of Kentucky. (A. P. 4a) The Opinion Affirming the Judgments of the Graves Circuit Court Of Kentucky was dated and entered by the Court Of Appeals Of Kentucky on October 21, 1994, and the Order denying the Motion For Discretionary Review of the petitioners, Vernon Jackson, Perry Jackson and Jerry Jackson, filed in the Supreme Court Of Kentucky was dated and entered on March 14, 1995 by the Supreme Court Of Kentucky. (A. P. 16a)

28 U.S.C. Article 1257 confers jurisdiction on this Court in the cases joined and presented herein. 28 U.S.C. Rules Of Supreme Court, Rule 10 also confers jurisdiction on this Court. The parties hereto had relied upon 28 U. S. C. Rules Of Supreme Court, Rule 10 as conferring jurisdiction for an appeal to this court, as did 28 U.S.C. Article 1257 at one time, as it did before amendment, and filed a Joint Notice Of Appeal in the Court Of Appeals Of Kentucky on April 27, 1995, by mailing same by registered mail, and filed a copy thereof in each of the four appeals in the Graves Circuit Court on May 1, 1995, along with nine copies thereof for any service it desired to make, as the record had been returned to it by the Clerk of

The Court Of Appeals Of Kentucky as shown by said Joint Notice Of Appeal. (A. P. 26a-28a) The fact that this Court by its Rule 10 did make provisions to hear cases on appeal that involved a State Statute being held valid by a State Court over the contention, as in these cases, it violated the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution Of The United States Of America, the latter making citizens of states citizens of the United States Of America thereby entitling them to the protection provided for all citizens by the Constitution Of The United States Of America, is such to show this Court should take jurisdiction of these cases either by Petition For Writ Of Certiorari or by appeal under the facts herein.

This Court in the case of Cohen v. California, 403 U. S. 15, 91 S. Ct. 178, 1971, stated:

"The question of our jurisdiction need not detain us long. Throughout the proceedings below, Cohen consistently claimed that, as construed to apply to the facts of this case, the statute infringed his rights to freedom of expression guaranteed by the First and Fourteenth amendments of the Federal Constitution. That contention has been rejected by the highest California state court in which review could be had. Accordingly, we are fully satisfied that Cohen has properly invoked our jurisdiction by this appeal. 28 U.S.C. Article 1257 (2) Darknke-Walker Mining Co. v. Bondurant, 257 U.S. 282, 42 S. Ct. 106, 66 L. Ed. 239, (1921)."

This Court as shown by the case of Commonwealth Of Pa., v. Board of Direction Of City Trusts of City Of Philadelphia, 77 S. Ct. 806, 353 U.S. 230, 1 L. Ed. 2d 792, will treat any federal questions raised by an appeal in regard to due process of law not pertaining to a state statute as if raised by Petition For Writ Of Certiorari.

The statutes involved in these cases are set out verbatim

under the following section herein.

THE CONSTITUTIONAL PROVISIONS AND STATUTES

U.S.C. Constitution Of The United States Of America, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments are as follows:

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the

right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one

years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3

No person shall be a Senator or Representative in Congress, or elector of President or Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C. Article 1257 is as follows:

§1257. STATE COURTS; CERTIORARI

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

18 U.S.C. Articles 2510 through 2520 are as follows:

§ 2510. Definitions

As used in this chapter—

(1) "wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications for communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication;

(2) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under

circumstances justifying such expectation, but such term does not include any electronic communication;

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(4) "intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device;

(5) "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than—

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(6) "person" means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;

(7) "Investigative or law enforcement officer" means any

officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) "contents", when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication;

(9) "Judge of competent jurisdiction" means —

(a) a judge of a United States district court or a United States court of appeals; and

(b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire, oral, or electronic communications;

(10) "communication common carrier" shall have the same meaning which is given the term "common carrier" by section 153(h) of title 47 of the United States Code;

(11) "aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed;

(12) "electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

(A) any wire or oral communication;

(B) any communication made through a tone-only

paging device; or

(C) any communication from a tracking device (as defined in section 3117 of this title);

[(D) Redesignated (C)]

(13) "user" means any person or entity who—

(A) uses an electronic communication service; and

(B) is duly authorized by the provider of such service to engage in such use;

(14) "electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

(15) "electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications;

(16) "readily accessible to the general public" means, with respect to a radio communication, that such communication is not—

(A) scrambled or encrypted:

(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication;

(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio; or

(F) an electronic communication;

(17) "electronic storage" means—

(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communications; and

(18) "aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who—

(a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic

communication;

(b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication;

or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any

wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e) (i) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by sections 2511(2)(A)(ii), 2511(b)-(c), 2511(e), 2516, and 2518 of this subchapter, (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, and (iv) with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation,

shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

(2)(a)(i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or

property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

> (ii) Notwithstanding any other law, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—
>
> > (A) a court order directing such assistance signed by the authorizing judge, or
> >
> > (B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provisions of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished a court order or certification under this chapter, except as may otherwise be

required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any such disclosure, shall render such person liable for the civil damages provided for in section 2520. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this chapter.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

(e) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall

not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(f) Nothing contained in this chapter or chapter 121, or section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.

(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(ii) to intercept any radio communication which is transmitted—

(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(II) by any governmental, law enforcement,

civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(IV) by any marine or aeronautical communications system;

(iii) to engage in any conduct which—

(I) is prohibited by section 633 of the Communications Act of 1934; or

(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

(h) It shall not be unlawful under this chapter—

(i) to use a pen register or a trap and trace device

(as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.

(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) which were inadvertently obtained by the

service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled, encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication, then—

(i) if the communication is not the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

(ii) if the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication or a paging service communication, the offender shall be fined under this title.

(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

(i) to a broadcasting station for purposes of retransmission to the general public; or

(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

(5)(a)(i) If the communication is—

(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

(ii) In an action under this subsection—

(A) if the violation of this chapter is a first

offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.

§ 2512. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited

(1) Except as otherwise specifically provided in this chapter, any person who intentionally—

(a) sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications;

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception

of wire, oral, or electronic communications, and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(c) places in any newspaper, magazine, handbill, or other publication any advertisement of—

(i) any electronic mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

(ii) any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral, or electronic communications,

knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce,

shall be fined under this title or imprisoned not more than five years, or both.

(2) It shall not be unlawful under this section for—

(a) a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communications service, or

(b) an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision thereof, in the normal course of the activities of the United States, a State, or a political subdivision thereof,

to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications.

§ 2513. Confiscation of wire or oral communication intercepting devices

Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of section 2511 or section 2512 of this chapter may be seized and forfeited to the United States. All provisions of law relating to (1) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, mechandise, and baggage for violations of the customs laws contained in title 19 of the United States Code, (2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (3) the remission or mitigation of such forfeiture, (4) the compromise of claims, and (5) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 of the United States Code shall be performed with respect to seizure and forfeiture of electronic, mechanical, or other intercepting devices under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

§ 2514. Immunity of witnesses

Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of this chapter or any of the offenses enumerated in section 2516, or any conspiracy to violate this chapter or any of the offenses enumerated in section 2516 is necessary to the public interest, such United States attorney, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except in a proceeding described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

§ 2515. Prohibition of use as evidence of intercepted wire or oral communications

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a

State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots) chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

(b) a violation of section 186 or section 501 (c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 1014 (relating to loans and credit applications generally; renewals and discounts), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), sections 2251 and 2252 (sexual exploitation of children), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 1963 (violations with respect to racketeer influenced and

corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), and section 115 (relating to mail fraud), section 351 (violations) with respect to congressional , Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), or section 1992 (relating to wrecking trains);

(d) any offense including extortinate credit transactions under section 471, 472, or 473 of this title.

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions);

(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

(i) any felony violation of chapter 71 (relating to obscenity) of this title;

(j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline) or 46502 (relating to aircraft piracy) of title 49;

(k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

(l) the location of any fugitive from justice from an offense described in this section; or

(m) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);

(n) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms); and

(o) any conspiracy to commit any offense described in any subparagraph of this paragraph.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, or order authorizing

or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

§ 2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any State or political subdivision thereof.

(4) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged

character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

§ 2518. Procedure for interception of wire, oral, or electronic communications

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities

from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex

parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that—

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, oral, or electronic communcation under this chapter shall specify—

(a) the identity of the person , if known, whose communications are to be intercepted;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire, oral, or electronic communication under this chapter shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance. Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.

(5) No order entered under this section may authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or

ten days after the order is entered. Extensions of an order may be granted, but only upon application for an extention made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty-days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) an emergency situation exists that involves—

(i) immediate danger of death or serious physical injury to any person,

(ii) conspiratorial activities threatening the national security interest, or

(iii) conspiratorial activities characteristic of organized crime,

that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception, may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

(8) (a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the

period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of section 2517.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be diclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2518(7)(b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of—

(1) the fact of the entry of the order or the application;

(2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire, oral, or electronic communications were or were not intercepted.

The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any wire, oral, or electronic communication intercepted pursuant to this chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date of the order was entered and shall be diligently prosecuted.

(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.

(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from

which, or the place where, the communication is to be intercepted do not apply if—

(a) in the case of an application with respect to the interception of an oral communication—

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(iii) the judge finds that such specification is not practical; and

(b) in the case of an application with respect to a wire or electronic communication—

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) the judge finds that such purpose has been adequately shown.

(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government shall decide such a motion expeditiously.

§ 2519. Reports concerning intercepted wire, oral, or electronic communications

(1) Within thirty days after the expiration of an order (or each extension thereof) entered under section 2518, or the denial of an order approving an interception, the issuing or denying judge shall report to the Administrative Office of the United States Courts—

(a) the fact that an order or extension was applied for;

(b) the kind of order or extension applied for (including whether or not the order was an order with respect to which the requirements of sections 3518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title);

(c) the fact that the order or extension was granted as applied for, was modified, or was denied;

(d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(e) the offense specified in the order or application, or extension of an order;

(f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and

(g) the nature of the facilities from which or the place where communications were to be intercepted.

(3) In April of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire, oral, or electronic communications pursuant to this chapter and the number of orders and extensions granted or denied pursuant to this chapter during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by subsections (1) and (2) of this section. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by subsections (1) and (2) of this section.

§ 2520. Recovery of civil damages authorized

(a) **In general.**—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

(b) **Relief.**—In an action under this section, appropriate relief includes—

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c) and punitive

damages in appropriate cases; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

(c) **Computation of damages.**—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1000.

(2) In any other action under this section, the court may assess as damages whichever is the greater of—

(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a

result of the violation; or

(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

(d) **Defense.**—A good faith reliance on—

(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

(e) **Limitation.**—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

KRS.218A.405 through KRS 218A.460 are as follows and may be found in Baldwin's Kentucky Revised Statutes, Vol. 4.

218A.405 Definitions

The following definitions apply in KRS 218A.405 to 218A.460 unless the context otherwise requires:

(1) "Interest in property" includes:

(a) The interest of a person as a beneficiary under a trust, in which the trustee of the trust holds legal or record title of the personal or real property;

(b) The interest of a person or a beneficiary under any other trust arrangement under which any other person holds legal or record title to personal or real property for the benefit of the person; or

(c) The interest of a person under any other form of express fiduciary arrangement under which any other person holds legal or record title to personal or real property for the benefit of the person.

(d) Real property or an interest in real property shall be deemed to be located where the real property is located.

Personal property or an interest in personal property shall be deemed to be located where the trustee is located, the personal property is located, or the instrument evidencing the right is located.

(2) "Forfeiture lien notice" means the notice provided for in KRS 218A.450.

(3) "Property" means everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal, easements, franchises, incorporeal hereditaments, or any interest therein.

(4) "Real property" means any real property located in the Commonwealth or any interest in real property, including any lease of, or mortgage upon, real property.

(5) "Trustee" includes:

(a) Any person acting as trustee under a trust in which the trustee holds legal or record title to personal or real property;

(b) Any person who holds legal or record title to personal or real property in which any other person has an interest; or

(c) Any successor trustee.

The term "trustee" shall not include an assignee or trustee for an insolvent debtor, a guardian under the Uniform Veterans' Guardianship Act, or an executor, administrator, administrator with will annexed, testamentary trustee, curators, guardians, or committees, appointed by, or under control of, or accountable to a District Court.

218A.410 Property subject to forfeiture

(1) The following are subject to forfeiture:

(a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state.

(b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband.

(e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter.

(f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.

(g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection.

(h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:

1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

2. No conveyance is subject to forfeiture under this section by reason of any act or omission

established by the owner thereof to have been committed or omitted without his knowledge or consent;

3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana.

(i) All books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter.

(j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph.

(k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.

(2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he is a subsequent bona fide purchaser for value without actual or constructive notice to the act or omission giving rise to the forfeiture.

(3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

218A.415 Procedure for seizure of property

(1) Personal property subject to forfeiture under this

chapter may be seized by any law enforcement agency upon process issued by any judge that is empowered to issue a warrant of arrest or search warrant and in whose jurisdiction the property is located. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture pursuant to this chapter.

(2) Property taken or detained under this section shall not be subject to replevin, but shall be deemed to be in the custody of the law enforcement agency subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the law enforcement agency may:

(a) Remove the property to a place designated by it; or

(b) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(3) Real property subject to forfeiture may be seized only pursuant to final judgment and order of forfeiture or, upon order of the court having jurisdiction over the property. The order may be obtained pursuant to this subsection upon application to the Commonwealth.

(a) Upon receipt of the application, the court shall immediately enter an order setting a date for hearing on the matter no fewer than five (5) days nor more than ten (10) days after the filing of the application. At the hearing:

1. The court shall take evidence on the issues of whether the property named in the application is forfeit and seizure is necessary to preserve the property pending final judgment.

2. The Commonwealth shall have the initial burden of showing the existence of probable cause for forfeiture of the property and the necessity of seizure. On the showing by the Commonwealth, the respondent shall have the burden of showing by a preponderance of the evidence that the property is not subject to forfeiture.

3. Evidence at the seizure hearing may not be suppressed on the ground that its acquisition by search or seizure violated constitutional protections applicable in criminal cases relating to unreasonable searches or seizures.

4. If the court makes a determination in favor of the Commonwealth, it shall enter an order authorizing the seizure of the property.

5. The court may, in its discretion, permit the owner of the property to post security equal to the value of the property in lieu of seizure.

(b) A temporary seizure order pursuant to this section may be entered on application without notice or an opportunity for a hearing if the Commonwealth demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture and the need to preserve the availability of property through immediate seizure

outweighs the hardship that an immediate seizure may cause the owner. The temporary order shall expire ten (10) days after the date on which it is entered or at the time of the hearing provided for in paragraph (a) of this subsection.

218A.420 Procedure for disposal of seized and forfeited property; distribution of proceeds

(1) All property which is subject to forfeiture under this chapter shall be disposed of in accordance with this section.

(2) All controlled substances which are seized and forfeited under this chapter shall be ordered destroyed by the order of the trial court unless there is a legal use for them, in which case they may be sold to a proper buyer as determined by the Cabinet for Human Resources by promulgated regulations. Property other than controlled substances may be destroyed on order of the trial court.

(3) When property other than controlled substances is forfeited under this chapter, the law enforcement agency may, subject to the provisions of KRS 218A.435:

(a) Retain it for official use;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be paid into the fund created in KRS 218A.435. Any sale shall be a public sale advertised pursuant to KRS Chapter 424.

218A.425 Valuation of property retained for official use

When seized property is retained for official use by law enforcement agencies under this chapter the value of the property shall be determined as follows:

(1) Vehicles shall be valued at their tax value;

(2) All other property shall be valued at its fair cash value by the property valuation administrator;

(3) Property shall be valued as of the time of sale by the law enforcement agency.

218A.435 Asset forfeiture trust fund; management; distribution

(1) There is hereby created a trust and revolving fund in the executive branch of state government to be known as the "Asset Forfeiture Trust Fund" herein referred to as the "trust fund".

(2) The trust fund shall consist of proceeds from sale of property forfeited to the Commonwealth pursuant to KRS 218A.410, any moneys as may be appropriated by the General Assembly, and any investment interest earned on the fund. The moneys in this fund are intended to supplement any funds appropriated by the General Assembly to the agency which will receive disbursements from the trust fund as provided in this section.

(3) The trust fund shall be managed by the state Office for Investment and Debt Management and all moneys in excess of the amount to be disbursed in a given fiscal year shall be invested to maximize returns. The principal and any interest earnings of the trust fund shall at no time lapse to the general fund.

(4) The trust fund shall be administered and audited by the Justice Cabinet. The secretary of justice or his designee shall promulgate administrative regulations necessary to further the purposes of KRS 218A.405 to 218A.460.

(5) The trust fund shall be disbursed in accordance with the provisions of subsection (6) of this section. All interest accumulated on the fund shall immediately be available for disbursement to the Justice Cabinet for costs associated with administration of the fund.

(6) The Justice Cabinet shall, upon advice from the Office for Investment and Debt Management, allocate the moneys in the fund quarterly, on a percentage basis, as provided in subsection (7) of this section.

(7) The principal of the trust fund shall be distributed as follows:

(a) Eighteen percent (18%) of the funds received in any fiscal year shall be allocated to the unified prosecutorial system to be disbursed by the Attorney General to those Commonwealth's attorneys or county attorneys who have participated in the forfeiture case;

(b) Thirty-six percent (36%) of the funds received in any fiscal year shall be allocated to the Cabinet for Human Resources to be used solely for the purpose of drug and alcohol abuse education, prevention, and treatment;

(c) Thirty-six percent (36%) of the funds received in any fiscal year shall be allocated to the Department of Corrections to be used solely for programs related to drug enforcement and incarceration; and

(d) Ten percent (10%) of the funds received in any fiscal year shall be allocated to the Justice Cabinet to be used solely for the purpose of: training related to asset forfeiture; printing program related training materials, such as manuals or handbooks; or

payments to state or local agencies for programs relative to crime prevention, drug abuse prevention, general law enforcement purposes, or other similar purposes relating to drug enforcement.

(8) The Attorney General, the secretary of the Cabinet for Human Resources, the commissioner of the Department of Corrections, and the secretary of the Justice Cabinet or their designees shall each promulgate administrative regulations which itemize the programs on which the moneys allocated from the trust funds to their respective agencies shall be spent and the method by which those moneys shall be distributed to local entities.

(9) On July 13, 1990, each state and local law enforcement agency which seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to being eligible for the receipt of grants from the trust fund, adopt policies relating to the seizure, maintenance, storage, and care of property pending forfeiture which are incompliance with or which substantially comply with the model policy for seizure of forfeitable assets by law enforcement agencies published by the Department of Criminal Justice Training. However, a state or local law enforcement agency may adopt policies that are more restrictive on the agency than those contained in the model policy and that fairly and uniformly implement the provisions of this chapter.

(10) On July 13, 1990, each state or local law enforcement agency which seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to being eligible to receive grants from the trust fund, have one (1) or more officers currently employed attend asset forfeiture training as approved by the Kentucky Law Enforcement Council which shall approve a curriculum of study for asset forfeiture training.

(11) Other provisions of this section notwithstanding, any vehicle seized by a law enforcement agency which is forfeited

pursuant to this chapter may be retained by the seizing agency for official use or sold within its discretion. Proceeds from the sale shall remain with the agency and shall not be paid into the trust fund and shall not be considered for purposes of the limits established in subsection (12) of this section. The moneys shall be utilized for purposes consistent with KRS 218A.405 to 218A.460. The seizing agency shall be required to pay any bona fide perfected security interest on any vehicle so forfeited.

(12) Other provisions of law notwithstanding, the first fifty thousand dollars ($50,000) of forfeited coin or currency or of the proceeds from sale of any property forfeited pursuant to this chapter which was seized or forfeited by a single order of forfeiture, shall not be paid into the fund but ninety percent (90%) shall be paid to the law enforcement agency or agencies which seized the property to be used for direct law enforcement purposes and ten percent (10%) to the office of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding. The moneys are intended to supplement any funds appropriated to the recipient and shall not supplant other funding of any recipient. In addition, forty-five percent (45%) of all proceeds above fifty thousand dollars ($50,000) shall not be paid into the fund but shall be retained by the law enforcement agency or agencies which seized the property to be used for direct law enforcement purposes.

(13) When money or property is seized in a joint operation involving more than one (1) law enforcement agency or prosecutoiral office, the apportionment of fund to each pursuant to subsection (7)(a) of this section, or pursuant to subsection (12) of this section, shall be made among the agencies in a manner to reflect the degree of participation of each agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based. The trial court shall determine the proper division and include the

determination in the final order of forfeiture.

218A.440 Statement filed listing property seized; investigation of utilization of proceeds

(1) Each law enforcement agency seizing money or property pursuant to KRS 218A.415 shall, at the close of each fiscal year, file a statement with the Auditor of Public Accounts, and with the secretary of justice containing, a detailed listing of all money and property seized in that fiscal year and the disposition thereof. The listing shall identify all property so seized.

(2) Any agency failing to report as required by this section shall be liable to the state for the full value of all property and money so seized. The Attorney General shall institute civil actions for recovery of money or property obtained or retained in violation of KRS 218A.405 to 218A.460.

(3) The Auditor of Public Accounts, the secretary of justice or the Attorney General may at any time initiate an inquiry to determine that any agency is utilizing proceeds from the fund established in KRS 218A.435 in accordance with law, or an inquiry to determine that property is being forfeited as required.

218A.450 Lien on forfeited property; action by trustee; release of lien

(1) The Commonwealth shall have a lien on all property, real or personal, which is forfeit to the Commonwealth by virtue of KRS 218A.410. This lien shall not be defeated by gift, devise, sale, alienation, or any means whatever except by sale to a subsequent bona fide purchaser for value without actual or constructive notice of the lien. The lien shall commence from the time the property becomes forfeit and shall have priority over any other obligation or liability following that time but

shall be subordinate to any then existing perfected security interest on the property that is not itself subject to forfeiture.

(2) The Commonwealth may file on the official records of any one (1) or more counties a forfeiture lien notice of the lien created in subsection (1) of this section. No filing fee or other charge shall be required as a condition for filing the forfeiture lien notice, and the appropriate clerk shall, upon the presentation of a forfeiture lien notice, immediately record it in the official records.

(3) The forfeiture lien notice shall be signed by an attorney authorized to institute a forfeiture action on behalf of the Commonwealth. The notice shall set forth the following information:

(a) A description of the property which is subject to the lien;

(b) The name of the owner of record of the property subject to the lien if known;

(c) The date and place of seizure or location of any property not seized but subject to forfeiture;

(d) The violation of law alleged with respect to forfeiture of the property;

(e) A reference to any judicial proceeding pending against the property with reference to forfeiture, including the name of the county or counties where the proceeding has been brought, and, if known at the time of filing of the forfeiture lien notice, the case number of the proceeding, and the name of the defendant;

(f) The name and address of the attorney filing the forfeiture lien notice.

(4) The attorney filing the forfeiture lien notice shall, as soon as practicable after filing, furnish to any owner or lienholder of record either a copy of the recorded notice or a copy of the notice with annotation on it of the county or counties in which the notice has been recorded. Failure to provide a copy of the notice shall not invalidate or otherwise affect the lien.

(5) In conjunction with any forfeiture proceeding, an attorney representing the Commonwealth may file, without prior court order, in any county, a lis pendens under the provisions of KRS 382.440, and any person acquiring an interest in the subject real property or interest in it, if the real property or interest is acquired subsequent to the filing of lis pendens, shall take the interest subject to any subsequent judgment of forfeiture.

(6)(a) A trustee who acquires actual knowledge that a forfeiture lien notice or a forfeiture proceeding has been filed against any property to which he holds legal or record title, shall immediately furnish to the attorney representing the Commonwealth the following:

1. The name and address of the holder of the beneficial interest in the property, as known to the trustee;

2. The name and address, as known to the trustee, of all other persons for whose benefit the trustee holds title to the personal or real property;

3. If requested by the attorney representing the Commonwealth, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the personal or real property.

(b) Any trustee who knowingly fails to comply with the provisions of this section is guilty of a Class D felony.

(7) Any trustee who knowingly transfers or conveys title to personal or real property for which a forfeiture lien notice has been filed at the time of the transfer or conveyance in the county where the personal or real property is located shall be liable to the Commonwealth for the greater of:

(a) The amount of proceeds received directly from the property named in the forfeiture lien notice as a result of the transfer or conveyance;

(b) The amount of proceeds received by the trustee as a result of the transfer or conveyance and distributed to the holder of the beneficial interest in the property named in the forfeiture lien notice; or

(c) The fair market value of the interest of the property named in the forfeiture lien notice transferred or conveyed; but if the trustee transfers or conveys the personal or real property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the discretion of the beneficiary or his designee, the trustee's liability shall not exceed the amount of the proceeds held for so long as the proceeds are held by the trustee.

(8) The Commonwealth may bring a civil proceeding in any Circuit Court against the trustee to recover from the trustee the amounts set forth in subsection (7) of this section, and the Commonwealth shall also be entitled to recover investigative costs and attorney's fees incurred.

(9)(a) The provisions of this section shall not apply to any transfer or conveyance by a trustee under a court order, unless the court order is entered in an action between the trustee and the beneficiary.

(b) Unless the trustee has actual knowledge that property is named in a forfeiture lien notice, this section shall not apply

to:

1. Any conveyance by a trustee required under the terms of any trust agreement where the trust agreement is a matter of public record prior to the filing of any forfeiture lien notice; or

2. Any transfer or conveyance by a trustee to all of the persons who own a beneficial interest in the trust.

(10) The term of a forfeiture lien notice shall be for a period of six (6) years from the date of filing unless a renewal forfeiture lien notice has been filed, and, in such case, the term of the renewal forfeiture lien notice shall be for a period of six (6) years from the date of its filing. The Commonwealth shall be entitled to only one (1) renewal of the forfeiture lien notice.

(11) The attorney who filed the forfeiture lien notice may release in whole or part any forfeiture lien notice or may release any personal or real property or interest in it from the forfeiture lien notice upon the terms and conditions he determines. Any executed release of a forfeiture lien notice shall be filed in the official records of any county. No charge or fee shall be imposed for the filing of any release of forfeiture lien notice.

(12) If no court proceeding to obtain an order of forfeiture is pending against the property named in a forfeiture lien notice at the time of its filing, for purposes only of contesting the notice, it shall be treated as a seizure pursuant to KRS 218A.415.

(13) An agent of the Commonwealth shall have a continuing right to inspect property against which a forfeiture lien has been placed pursuant to this section and the Commonwealth shall have the authority to stay any civil forclosure or repossession actions concerning property subject

to the lien pending final order of forfeiture.

218A.460 Jurisdiction; ancillary hearing; application of forfeiture procedures

(1) Jurisdiction in all forfeiture proceedings shall vest in the court where the conviction occurred regardless of the value of property subject to forfeiture.

(2) Following conviction of a defendant for any violation of this chapter, the court shall conduct an ancillary hearing to forfeit property if requested by any party other than the defendant or Commonwealth. The Commonwealth's attorney, or county attorney if the proceeding is in District Court, shall initiate the hearing by filing a motion requesting entry of a final order of forfeiture upon proof that the property was being used in violation of the provisions of this chapter. The final order of forfeiture by the court shall perfect in the Commonwealth or appropriate law enforcement agency, as provided in KRS 218A.435, right, title, and interest in and to the property. The Commonwealth may transfer any real property so forfeited by deed of general warranty.

(3) If the property subject to forfeiture is of a type for which title or registration is required by law, or if the owner of the property is known in fact to the Commonwealth at the time of the hearing, or if the property is subject to a perfected security interest in accordance with the Uniform Commercial Code, KRS Chapter 355, the attorney representing the Commonwealth shall give notice of the ancillary hearing by registered mail, return receipt requested, to each person having such interest in the property, and shall publish notice of the forfeiture once each week for two (2) consecutive weeks in a newspaper of general circulation as defined in KRS Chapter 424 in the county where the forfeiture proceedings will occur. The notice shall be mailed and first published at least four (4) weeks prior to the ancillary hearing and shall describe the

property; state the county, place, and date of seizure, state the name of the law enforcement agency holding the seized property; and state the name of the court in which the ancillary hearing will be held and the date of the hearing. However, the Commonwealth shall be obligated only to make a diligent search and inquiry as to the owner of subject property; and if, after diligent search and inquiry, the Commonwealth is unable to ascertain the owner, the actual notice requirements by mail shall not be applicable.

(4) Unless otherwise expressly provided in KRS 218A.410, the burden shall be upon claimant to property to prove by preponderance of the evidence that it is not subject to forfeiture. Any claimant other than a person who holds title or registration to the property or who has a perfected security interest in the property shall be required to post a bond equivalent to ten percent (10%) of the appraised value of the property with the clerk of the court before being allowed to litigate the claim. The bond shall offset the costs of litigation incurred by the Commonwealth. A claimant may proceed in forma pauperis with leave of court upon sworn petition subject to the applicable rules and subject to the provisions of law concerning perjury.

(5) The procedures for forfeiture proceedings as established in KRS 218A.405 ro 218A.460 shall apply to any property subject to forfeiture which is pending as of July 13, 1990.

KRS 382.440 is as follows and may be found in Baldwin's Kentucky Revised Statutes, Vol. 6.

382.440 Memorandum of actions affecting real property to be filed

(1) No action, cross-action, counterclaim, or any other proceeding, except actions for forcible detainer or forcible entry or detainer, commenced or filed in any court of this state,

in which the title to, or the possession or use of, or any lien, tax, assessment or charge on real property, or any interest therein, is in any manner affected or involved, nor any order nor judgment therein, nor any sale or other proceeding, nor any proceeding in, nor judgment or decree rendered, in a district court of the United States, shall in any manner affect the right, title or interest of any subsequent purchaser, lessee, or encumbrancer of such real property, or interest for value and without notice thereof, except from the time there is filed, in the office of the county clerk of the county in which such real property or the greater part thereof lies, a memorandum stating:

(a) The number of the action, if it is numbered, and the style of such action or proceeding and the court in which it is commenced, or is pending;

(b) The name of the person whose right, title, interest in, or claim to, real property is involved or affected; and

(c) A description of the real property in the county thereby affected.

(2) Such notice may be filed by any party in interest. No notice shall extend to the interest of any person not designated therein, nor to any real property or interest except that described therein, and when any amendment is made in the action or proceeding changing the description of the real property, or interest involved or affected, or extending the claim against the property, the party filing such notice shall file a new notice.

(3) Where the real property so affected consists of tracts lying in different counties, a separate notice shall be filed in each county as to the tract lying in that county.

KRS 376.460 is as follows and may be found in Baldwin's Kentucky Revised Statutes, Vol. 6.

376.460 Attorney's lien

Each attorney shall have a lien upon all claims, except those of the state, put into his hands for suit or collection or upon which suit has been instituted, for the amount of any fee agreed upon by the parties or, in the absence of such agreement, for a reasonable fee. If the action is prosecuted to a recovery of money or property, the attorney shall have a lien upon the judgment recovered, legal costs excepted, for his fee. If the records show the name of the attorney, the defendant shall be deemed to have notice of the lien. If the parties in good faith and before judgment compromise or settle their controversy without the payment of money or other thing of value, the attorney for the plaintiff shall have no claim against the defendant for any part of his fee.

STATEMENT OF THE CASE

This case involves the election of certain officers, members of a WANT Team, approximately thirty-five officers, in Western Kentucky, who have associated themselves as constituting a War Against Narcotics Team, to routinely use a paid informer, who told them the petitioner, Jerry Jackson, was dealing in drugs, and an undercover officer while both of them were wired for sound in violation of 18 U.S.C. Article 2510 through Article 2520, to stop the petitioner, Perry Jackson, thereby depriving him of his privacy, compelling him to be a witness against himself and depriving him of his right to have counsel without the benefit of the Miranda warnings thereby depriving him of his rights under the Forth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America, and make inquiry about purchasing drugs all of which was called to the attention of the Graves Circuit Court by a Motion To Quash Indictment And Motion To Suppress Evidence filed on September 14, 1992, and overruled by Order entered on September 21, 1992. (R. 030, PP. 54-60, 65-67, R.Ex.M. 25-36). That as a result of that illegal stop they alleged and proved to the satisfaction of the Jury, at a single trial over the petitioners' objections, that they purchased two $20.00 Rocks of Crack Cocaine from the petitioners, Vernon Jackson and Perry Jackson, on February 15, 1992, and that the undercover officer and another paid informer, while illegally wired for sound under 18 U.S.C. Article 2510 through Article 2520, to proceed to contact Shirley Todd, daughter of petitioner, Vernon Jackson, and sister of the petitioners, Perry Jackson and Jerry Jackson, and go to the home of the petitioner, Vernon Jackson, and purchase a $50.00 Rock of Crack Cocaine from the petitioners, Vernon Jackson and Jerry Jackson on February 18, 1992. They several weeks later after going before the Grand Jury without the petitioners having knowledge of such procedure arrested the petitioners, Vernon Jackson, Perry Jackson and Jerry Jackson, to their prejudice under RCr 5.08 which is as follows:

If the defendant notifies the attorney for the

Commonwealth in writing of his desire to present evidence before the Grand Jury, the attorney for the Commonwealth shall so inform the Grand Jury. The grand jurors may hear evidence for the defendant but are not required to do so.

They were convicted and each sentenced to ten years in the State Penitentiary, without being fined with Bond on Motion being set at $20,000.00 for petitioner, Vernon Jackson, and $10,000.00 on each of the other petitioners, Perry Jackson and Jerry Jackson. (Judgment And Sentence On Plea Of Not Guilty as to each of said petitioners contained in the Appendix at PP.17a-25a and Portion of Transcript of Evidence as relating to posting of Bond contained in the Appendix at PP.126a-131a) Said petitioners were unable to post Bond and had to serve time until they were released on parole. (Notice of Discharge as to each of said petitioners in Appendix at PP. 119a-121a)

The constitutional issues were raised throughout the trial by tendering Instructions To The Jury and objection to the Instructions given by the Court on the basis a separate instruction should be given on each count as to each petitioner as same were ambiguous. (A. PP. 48a-66a) The Jury did make inquiry about the instructions in that regard and the Court explained them to it. (A.P. 13a, Tr. Ex. PP. 598-601R. Ex. M. 598-601) The issues presented in the first twelve questions herein presented were brought to the attention of the Graves Circuit Court in Motion For Judgment Notwithstanding The Verdict And Motion For New Trial and ruled upon by it in its Order overruling same (A.P. 82a-90a, R. 93-103, Tr. Ex. PP. 618-627,) They as raised in the Court of Appeals by counsel appointed to represent them therein as shown by copies of same from their brief wherein they also attached a copy of the above motions. (A. PP. 107a) They were raised in the Court of Appeals of Kentucky for the petitioner, Louis V. Mangrum, who due to failing health, employed the Hon. Gerald Bell, as shown by copies of same from his brief. (A. P. 106a) They were also raised in the Supreme Court of Kentucky by respective counsel as shown by their respective Motion For Discretionary Review as shown by copies therefrom. (A. PP.104a & 105a) Question

numbered thirteen herein is for the first time presented to this Court with the contention of the petitioners the Court of Appeals of Kentucky should have taken judicial notice of it. Counsel for the petitioners, Vernon Jackson, Perry Jackson and Jerry Jackson, did in essence present all issues contained in the first twelve questions herein by contending plain error called for the reversal of the judgments of the Graves Circuit Court and attaching the Motion For Judgment Notwithstanding the Verdict And For New Trial.

ARGUMENT

The petitioners realize their ignorance as well as their knowledge is revealed by their thirteen questions presented herein. Realizing that they contend that if all it takes is a paid informer's testimony and the testimony of an undercover agent, who must rely on what the paid informer tells him as to who he is purchasing cocaine from, and a Rock of Crack Cocaine to support a person's guilt beyond reasonable doubt we all stand close to the prison doors when they pick a specific date in the past as to deprive one of any memory as to where he was at that time. That strips the accused from any defense. Then when his property is all tied up by a lien being placed upon his property thereby leaving him penniless he cannot make bond or employ counsel of his choice which are the facts in this case. This type action by the police in by passing all of the petitioners constitutional rights contained in the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution Of the United States of America, calls for further supervision by this Court even though this Court in the past on many occasions has condemned many phases of same as shown by the cases of Alderman v. United States and Inanov v. United States and Butenko v. United States, 394 U.S. 165, 39 S. Ct. 961, 1969, and Gomey v. United States, 490 U.S. 858, 376, 1989, wherein this Court stated:

"Among those basic fair trial rights that 'can never be treated as harmless' is a defendant's 'right to an impartial adjudicatior, be it judge or jury.' Gray v. Mississippi, 481 U.S.

648, 668 (1987) (quoting Chapman v. California, 386 U.S. 18, 23 (1967)."

See also the case of Miranda v. Arizona, 384 U.S. 436-479-480, 86 S. Ct. 1602, 1966.

Even though this Court dealt with the issue of forfeiture being utilized to tie up the fruits of crime in the Alderman case supra it has not dealt with it as it relates to due process of law and the Court of Appeals Of the United States in the recent case of U.S. v. Michelle's Lounge, 39 F. 3rd. 684, 1994, stated:

Due process requires that person not be deprived of property without notice and an opportunity for a hearing. Fvento v. Sheir, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d. 556 (1972) The seizure of assets pursuant to 21 U.S.C. Article 881constitutes a deprivation of property in the constitutional sense."

"...due process requires that sufficient assets be released to remedy the deprivication of assets needed to pay a defense attorney's fees. See Maza-Goney 860 F. 2d. at 730..."

Jarwarski when he was president of the American Bar Association, I believe said the greatest threats to our society are corruption and incompetency and that it is difficult to determine where one ends and the other begins, which means everyone strive to act appropriately in a government of the people, for the people and by the people wherein the individual rights protecting the individuals therein charged with committing a crime are observed by the law enforcement officials as a government for the people places emphasis on the importance of the individual not the masses. This government should provide means by which every person not suffering a handicap can obtain employment whereat he can earn enough to pay for health insurance, approximately six thousand dollars a year, for a family of four, and otherwise live above the poverty level thereby eliminating the "idle mind, devil's work shop," and carry out the principles the late president, Franklin D. Roosevelt,

so galantly employed to permit people to earn a respectable living and have pride in themselves, their country and law and order. When people have those prides the enforcement of the criminal law will become a minor task.

This Court should certainly make it clear that any forfeiture or lien placed on any property be done after a judicial hearing has taken place and after the Court has specifically considered the maximum fine that can be imposed and the worth of the property as shown by this Court's holding that same is subject to the Eighth Amendment, excessive fine, in the case of Austin v. United States, 113 S. Ct. 2801, 1993.

This Court should issue its Writ Of Certiorari to the Court Of Appeals Of Kentucky so this Court, after briefing and oral argument, may take appropriate action to generate respect for the officials enforcing the law and protect the individual rights of the petitioners herein as to the issues raised by their questions.

Respectfully submitted,

Louis V. Mangrum
Counsel of Record for Petitioners
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Mayfield, Kentucky 42066-2489
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APPENDIX

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COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
No. 93-CA-000585-MR

FINAL

LOUIS MANGRUM APPELLANT

VS. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE JOHN T. DAUGHADAY, JUDGE
ACTION NO. 92-CR-000030

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION and ORDER DISMISSING

BEFORE: EMBERTON, GARDNER, and JOHNSON, Judges.

GARDNER, JUDGE: Louis V. Mangrum (Mangrum) appeals from an order finding his lien on a parcel of residential real property to be inferior to a lien filed and perfected by the Commonwealth. We believe Mangrum's appeal is premature, and accordingly must dismiss.

Mangrum, an attorney, represented Perry, Jerry, and Vernon Jackson (the Jacksons) in a criminal proceeding in Graves Circuit Court. The matter involved the sale of cocaine by the defendants which occurred at a house owned by Vernon Jackson. Prior to representing the Jacksons, Mangrum entered into an agreement with Vernon which apparently provided that equity in Vernon's home would be used to pay Mangrum's attorney fee. Mangrum did not file a notice of lien with the Graves County Clerk, and on April 16, 1992, the Commonwealth filed a notice of lis pendens against the property pursuant to Kentucky Revised Statute (KRS) 218A.405-460.[1] Mangrum subsequently filed a motion with the trial court seeking to release the Commonwealth's lis pendens and to establish Mangrum's lien as superior. On January 11, 1993, Mangrum's motion to release the lis pendens was denied, but

entered into as

the matter relating to the priority of liens was reserved for later adjudication.

After the Jacksons were convicted on January 27, 1993, a sentencing hearing was held, at which time Mangrum again moved the court to release the lis pendens and to determine the priority of the liens. The motion to release the lis pendens was denied, and the Commonwealth's lien was found to be superior. Mangrum filed a notice of appeal on February 26, 1993, and on March 4, 1992, the court entered an order confirming the bench rulings rendered at the sentencing hearing. A second notice of appeal was filed by Mangrum on March 8, 1993.

The primary issue now before us is whether the trial judge committed reversible error in concluding that the Commonwealth's lien on the Jackson home pursuant to KRS 218A.450 is superior to Mangrum's interest in the parcel under the attorney lien provisions of KRS 376.460. We will not reach the corpus of this issue, however, as it appears that this matter is not final and appealable. KRS 218A.460 (2) clearly requires the lower court to conduct an ancillary hearing on property forfeiture if the forfeiture is challenged by a party other than the defendant or the Commonwealth. No such ancillary hearing was conducted. Irrespective of KRS 218A.460 (2), implicit in the forfeiture provision is the recognition that the parties are entitled to an opportunity to present their claims and offer proof. See generally, Osborne v. Commonwealth, Ky., 839 S.W. 2d 281 (1992). Although the matter was given a cursory review by the trial court at the sentencing hearing and the judge's conclusions were "merged" into the February 22, 1993, criminal judgment, the issues presented by Mangrum have yet to be addressed to the degree which the statutory law and case law require.[2] Accordingly, the appeal is premature and must be dismissed. Kentucky Rule of Civil Procedure (CR) 54.01 and 73.01 Mangrum's arguments relating to his standing to proceed and to the constitutionality of KRS 218A.404-460 are moot.

ALL CONCUR.

[1]KRS 218A.405-460 provides for the forfeiture of property used in the commission of certain criminal acts.

[2]At the sentencing hearing conducted February 22, 1993, the trial judge stated,

> Mr. Mangrum, you can submit a memorandum to the court arguing your position and Mr. Weisenberger, the Commonwealth needs to submit one as to whether or not the fact that you filed the notice under the statute and created a lien under the forfeiture statute on drug cases would take priority in this case and I will give you each fifteen days to submit that memorandum to me and then I will enter a written order ruling on the priority of the liens.

Shortly thereafter, however, the judge stated, "Well Mr. Mangrum, I find that the Commonwealth's lien is superior. Your motion for a lien superior to the Commonwealth's on the forfeiture is denied." No memoranda on the issue were subsequently filed.

JUDGE, COURT OF APPEALS

ATTORNEY FOR APPELLANT:

Gerald L. Bell
Murray, Kentucky

ATTORNEY FOR APPELLEE:

Chris Gorman
Attorney General

Sharon K. Hilborn
Assistant Attorney General
Frankfort, Kentucky

ENTERED: September 23, 1994

SUPREME COURT OF KENTUCKY
94-SC-849-D
(93-CA-585)

LOUIS MANGRUM — MOVANT

V. GRAVES CIRCUIT COURT
NO. 92-CR-30

COMMONWEALTH OF KENTUCKY — RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

ENTERED February 8, 1995.

Robert F. Stephens
Chief Justice

2-10-95

BY _____ D.C.

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 93-CA-000586-MR

FINAL
DATE MAR 16 1995

VERNON JACKSON — APPELLANT

APPEAL FROM GRAVES CIRCUIT COURT
V. HONORABLE JOHN T. DAUGHADAY, JUDGE
ACTION NO. 92-CR-000030

COMMONWEALTH OF KENTUCKY — APPELLEE

and

NO. 93-CA-000587-MR

PERRY JACKSON — APPELLANT

APPEAL FROM GRAVES CIRCUIT COURT
V. HONORABLE JOHN T. DAUGHADAY, JUDGE
ACTION NO. 92-CR-00029

COMMONWEALTH OF KENTUCKY — APPELLEE

and

NO. 93-CA-000588-MR

JERRY JACKSON — APPELLANT

APPEAL FROM GRAVES CIRCUIT COURT
V. HONORABLE JOHN T. DAUGHADAY, JUDGE
ACTION NO. 92-CR-00027

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

FILED 32195
GRAVES CIRCUIT COURT
BY D.C.

BEFORE: EMBERTON, GARDNER, and JOHNSON, Judges.

GARDNER, JUDGE: Vernon, Perry and Jerry Jackson (hereinafter referred to individually as Vernon, Perry and Jerry) each appeal from convictions in consolidated criminal actions in Graves Circuit Court. We affirm.[1]

On February 15, 1992, the Western Area Narcotics Team (hereinafter referred to as "WANT"),[2] conducted an undercover drug operation in Mayfield, Kentucky. Paducah Police Officer Lawrence Acree (Acree) and a confidential informant located a car driven by Perry, and Acree asked Perry for some cocaine. Perry led the officer to another location where Perry's father, Vernon, approached the vehicle and sold the officer two pieces of crack cocaine weighing .36 grams in exchange for forty dollars. No arrest was made.

[1]This appeal was heard concurrently with a related appeal of the Jacksons' attorney, Louis V. Mangrum. As the matters were not consolidated (properly so), separate opinions have been rendered.

[2]According to the record, WANT is a drug interdiction team composed of members of various local law enforcement agencies in four Western Kentucky counties. The team uses confidential informants to bring about undercover drug purchases, and uses the information obtained to effectuate indictments and arrests.

On February 18, 1992, Acree and another confidential informant went to Vernon's residence where they asked Jerry, Perry's brother, for some cocaine. The three went into the house where Acree gave Jerry fifty dollars. Vernon then gave Acree .35 grams of crack cocaine.

The matter was presented to the Graves County Grand Jury. On March 24, 1992, it indicted Vernon on two counts of trafficking in cocaine and indicted Perry and Jerry each on a single count of trafficking in cocaine. The Jacksons were tried

together and each defendant was found guilty. This appeal followed.

The Jacksons offer three claims of error. They first argue that the trial judge abused his discretion in consolidating the separate indictments for trial. Specifically, they argue that no evidence was adduced at trial that Jerry participated in the February 15, 1992, drug sale, nor that Perry participated in the February 18, 1992, sale. Accordingly, they maintain that the charges against Perry and Jerry should have been tried separately in order to insure that each defendant was afforded his right to a fair trial. The Commonwealth responds that Perry's claim of error was not properly preserved, and even if it was preserved, the Jacksons were not entitled to separate trials absent a showing prior to trial that joinder would be unduly prejudicial.

It is axiomatic that the trial court may order two or more indictments to be tried together if the offenses and the defendants could have been joined in a single indictment. Kentucky Rule of Criminal Procedure (RCr) 9.12 Offenses may be joined in a single indictment if they are of the same or similar character or are based on the same acts or transactions connected together or constituting parts of a common scheme or plan. RCr 6.18. Similarly, defendants may be joined in a single indictment if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. RCr.6.20. Having studied the record and closely considered the arguments of counsel, we believe it is clear that the charges contained in the indictments may properly be characterized as being of the same or similar character, or in the alternative that they were based on transactions connected together or constituting parts of a common scheme or plan. On February 15, 1992, Perry served as an intermediary between Officer Acree and Vernon, who consummated the actual sale of the crack cocaine to Acree. Three days later, on February 18, 1992, Jerry facilitated another illegal transaction between Acree and Vernon at Vernon's home. The transactions involved

the same type of controlled substance from the same seller, they occurred within a single three-day period, and were accomplished via the complicity of members of the same family.

Where it appears that a defendant will be prejudiced by joinder of other defendants for trial, the trial judge is required to order separate trials. RCr.9.16. The determination of whether prejudice will exist, however, lies within the sound discretion of the trial judge, and shall not be reversed on appeal unless there is an abuse of such discretion. Slone v. Commonwealth, Ky. App., 677 S.W.2d 894 (1984). Prejudice might be found, for example, where defendants offer antagonistic defenses or offer testimony implicating each other, or where one defendant wishes to introduce evidence which is made impermissible by the joinder. See generally, Ware v. Commonwealth, Ky, 537 S.W. 2d 174 (1976); Rachel v. Commonwealth, Ky., 523 S.W. 2d 395 (1975). We have found no evidence of such prejudice below, however, and accordingly can find no error on this issue.[3]

The Jacksons also argue that the trial judge committed reversible error by refusing to instruct the jury separately as to each defendant. Specifically, they apparently maintain that the instructions insufficiently advised the jury that the guilt or innocence of one defendant was not dependent on the guilt or innocence of the other defendants. The Commonwealth properly notes, however, that the jury was advised on at least two occasions that the acts of each defendant should be judged separately and that each defendant could be found guilty or innocent independently of the other defendants.

[3]The Commonwealth's argument regarding preservation of error is moot.

First, the instructions specifically stated that the defendants may be found individually guilty, stating in part that, "You will find the defendants . . . or either of them, guilty under this Instruction if . . . ." Secondly, the trial judge specifically addressed the issue when he entered into a dialogue in open court with one of the jurors. When the juror asked if the defendants were to be

judged "as a set," the trial judge responded, "No, no. The instructions tell you that you have to find each defendant innocent or guilty." We cannot find from the face of the record that any alleged error in the instructions so prejudiced the proceeding against the defendants that reversal is warranted.

The Jacksons' final argument is that the trial court committed reversible error in allowing the Commonwealth to introduce inadmissible testimony which so prejudiced the proceeding against the Jacksons as to deny them a fair trial. They offer a laundry list of alleged errors, the first of which being that a confidential informant should not have been allowed to testify as to his attempt (along with Acree) to set up a drug transaction with Jerry's sister. The Jacksons maintained that this testimony was not relevant to the matter at bar and accordingly was prejudicial. We have reviewed this testimony, and note that it relates to a conversation between Acree, the informant, and Jerry which occurred on the porch of the Jackson home just prior to the point at which the three individuals entered the house on February 18, 1992, and consummated the transaction.[4] Acree and the informant apparently were attempting to set up a drug transaction with Jerry's sister when it was determined that cocaine could be purchased from Vernon. As this conversation led to and immediately preceded the February 18, 1992, drug transaction, we cannot conclude that it was of no relevance to the proceeding. Had the comments of the confidential informant been gratuitous and offered simply to impugn the character of Jerry or Vernon Jackson, they could properly be characterized as objectionable. Since the conversation between Acree, the informant, and Jerry was a necessary prelude to the sale of cocaine by Vernon,we cannot find the testimony relating to that conversation to be irrelevant.

[4]The Commonwealth refers to this testimony as coming from a sheriff's deputy, namely Deputy Darnell. A review of the Transcript of Trial Proceedings indicates that the testimony to which the Jacksons objected was that of confidential informant, one Kenny Lynn McCampbell.

As to the remaining objections tendered by the Jacksons, counsel for the Jacksons candidly admits that they were not preserved for appellate review. Citing RCr 10.26, however, he maintains that the remaining instances of alleged error have the cumulative effect of rising to the level of palpable error. He points to instances where the Commonwealth's witnesses testified that the WANT team was attempting to identify "targets" or "drug dealers"; that the suspects were known by the informants to be drug dealers and often had criminal records; and that the confidential informants were referred to as cooperative, while innuendo, supposition, and unsupported hearsay were used to denigrate the targets of the investigation. We have reviewed this testimony to the degree that the citation to the record has allowed us, and cannot conclude that the cumulative effect is to create palpable error. RCr 10.26 provides that we may consider error which affects the substantial rights of a party even, i.e., palpable error, though that error is insufficiently preserved for review. Where we cannot conclude that a substantial possibility exists that the outcome of the trial would have been any different had the alleged errors not existed, we cannot find that alleged error to be palpable. Jackson v. Commonwealth, Ky. App., 717 S.W. 2d 511 (1986). As we do not believe that the alleged errors had the effect of prejudicing the proceedings against the Jacksons, nor that there is any reasonable probability that the outcome of the trial was affected by these alleged errors, we cannot find that this issue merits reversal.

For the foregoing reasons, the convictions of Jerry Jackson, Perry Jackson, and Vernon Jackson are affirmed.

EMBERTON, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN PART AND DISSENTS IN PART.

JOHNSON, JUDGE, DISSENTING IN PART. I must respectfully dissent from the Majority Opinion on the jury instruction issue. I do not consider the written jury instructions

or the oral comments by the trial court to the jury concerning those instructions sufficiently free of prejudice to the Jacksons to affirm their convictions on appeal. The circuit court's failure to unequivocally charge the jury that the guilt or innocence of one defendant was not dependent upon the guilt or innocence of his codefendant, the abbreviated "either/or" format of the court's written instructions, the obvious confusion experienced by the jury and the Commonwealth's prosecutorial strategy created the strong likelihood of a finding of guilt by association.

When defendants are charged with identical offenses and the evidence adduced at the consolidated trial is the same as to each defendant, the trial court is not required to give wholly separate instructions as to each defendant; however, it must either give a separate final mandate as to each defendant or otherwise clearly instruct the jury that the guilt or innocence of one defendant is not dependent on the guilt or innocence of a codefendant. State v. Patterson, 39 N.C. App. 243, 245-6, 249 S.E. 2d 833, 835 (1978); State v. Lockamy, 31 N.C. App. 713, 716, 230 S.E. 2d 565, 567-8 (1976). See Sizemore v. Commonwealth, 195 Ky. 621, 622, 242 S.W. 842 (1922).

Other jurisdictions agree that, in the least, the trial court should charge distinctly that the conviction of one defendant does not necessarily require the conviction of the other. People v. Parker, 178 A.D. 2d 665, 577 N.Y.S. 2d 895 (1991); Cordova v. State, 191 Ga. App. 297, 298-9, 381 S.E. 2d 436, 437-8 (1989); Lanzo v. State, 187 Ga. App. 616, 619, 371 S.E. 2d 119, 121-2 (1988); Porter v. State, 182 Ga. App. 624, 356 S.E. 2d 703, 704 (1987); Johnson v. State, 232 Ga. 61, 63-4, 205 S.E. 2d 190, 192 (1974). New York has ventured further to state that a failure to so charge the jury is not subject to harmless error analysis, regardless of the quantum of proof against the appellant. People v. Evans, 63 A.D. 2d 653, 404 N.Y.S. 2d 382, 383 (1978).

To clearly understand the problem presented by the jury instructions, it is necessary to quote pertinent parts of the

instructions. Instruction No. 1 reads in toto as follows:

INSTRUCTION NO. 1

Trafficking in Cocaine, a Schedule II Controlled Substance

You will find the Defendants, Vernon Jackson and Perry Jackson, or either of them, guilty under this Instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) that in this county on or about February 15, 1992, and before the finding of the indictment herein, Vernon Jackson and Perry Jackson, or either of them, sold or delivered a quantity of cocaine, a schedule II controlled substance to an undercover policeman;

(b) that Vernon Jackson and Perry Jackson, or either of them, knew the substance being sold or delivered was cocaine;

AND

(c) that Vernon Jackson and Perry Jackson, or either of them, had the cocaine in their possession with the intent of selling it to another person.

If you find the Defendants, Vernon Jackson and Perry Jackson, or either of them, guilty under this Instruction, you shall not fix punishment but shall indicate in your verdict only that you have found the Defendants, or either of them, guilty of this offense and return the verdict to the Court without deliberating on the question of punishment. (emphasis added).

Instruction No. II read exactly the same as Instruction No. I except: (1) Jerry Jackson replaced Perry Jackson; and (2) February 18, 1992 replaced February 15, 1992. The Commonwealth originally submitted separate instructions for each defendant. The appellants objected to the combined instruction given by the trial court, but the Commonwealth did not object. After jury deliberations began, the jury returned to the courtroom with a question and the following dialogue between the jury and court occurred.

> Juror: When you say either of them . . . that doesn't mean either of them but would also include both of them and that means either of them, just one person or both?
>
> The Court: As to each person, in other words, . . .
>
> Juror: They don't come as a set?
>
> The Court: No, no. The instructions tell you that you have to find each defendant innocent or guilty. If you find the person guilty, <u>each of these three elements must be satisfied beyond a reasonable doubt.</u>
>
> Juror: And when it says at the top, all of the following . . .
>
> The Court: Okay. Those are the three elements, A, B and C.
>
> Juror: And you have to be sure of all of those?
>
> The Court: All three of them, yes, Ma'am. Instruction number one related to both defendants on the February 15th date and instruction number two relates to two of the defendants on the 18th of February, <u>but all three elements are listed, A, B and C and you must find all of them in order to find guilt on each defendant.</u> (emphasis added).

I think from the foregoing that it is fair to say that the jury was confused. The problem that I have with this case is that while the trial court earnestly tried to clear up the confusion, this effort must be deemed to have been thwarted by the language in the written instructions. While the trial court correctly emphasized to the jury that all three elements of the offense must be found as to each defendant for that defendant to be found guilty, the instructions themselves allowed the actions of one defendant to satisfy the findings of culpable conduct of the other defendant. As an example, under subpart (a) in Instruction No. 1 if the jury believed Vernon Jackson to have sold cocaine, it could conclude that that element had been satisfied as to both Vernon and Perry, even if they did not believe that Perry sold cocaine. While some might argue that this is an unfounded concern, I submit four points. First, the plain language of the instructions allow the jury to reach the conclusion that I have argued. Second, the jury was obviously confused. Third, the defendants were tried as a group, and there are numerous laws for which criminal conviction is allowed based on the culpable conduct of one's associate. See KRS 502.020, criminal complicity; KRS 506.030, criminal solicitation; KRS 506.040, criminal conspiracy; KRS 506.080, criminal facilitation; KRS 506.120, engaging in organized crime. Fourth, and finally, the jury instructions denied appellants a fair trial by jury with all our state and federal constitutional protections. I will not extend this Dissent by elaborating on those rights so familiar to all of us. Suffice it to say, that the law is well-established that when jury instructions are capable of more than one reasonable interpretation, and one of those interpretations is prejudicial to the defendant's right to a fair trial, then the conviction must be reversed and the case remanded for a new trial. 1 Cooper, Kentucky Instructions To Juries (Criminal) Fourth Edition (1993) S1.52 p. 41 cites Moore v. Commonwealth, 7 Ky. Opin. 218 (1873), for the rule that "[e] very instruction should be so plain as to leave no room for contention as to its meaning and should contain no statement calculated to confuse or mislead the jury." In Baker v. Combs, Ky., 298 S.W. 2d 306, 307 (1957), the former Court

of Appeals reversed a theft conviction based on the jury instructions, and stated "[i]t was therefore incumbent upon the trial court to instruct the jury in such a manner as to make reasonably clear the essential elements constituting the crime charged." See also Carpenter v. Commonwealth, Ky., 771 S.W. 2d 822 (1989).

"[B]efore a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L.Ed.2d 706, 710-711 (1967). Since I am unable to do this, I would reverse and remand for a new trial.

ATTORNEYS FOR APPELLANTS:

Rebecca Ballard Diloreto
Frankfort, Kentucky

ATTORNEYS FOR APPELLEE:

Chris Gorman
Attorney General

Sharon K. Hilborn
Assistant Attorney General
Frankfort, Kentucky

SUPREME COURT OF KENTUCKY
94-SC-916-D
(93-CA-586)
(93-CA-587)
(93-CA-588)

VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON — MOVANTS

GRAVES CIRCUIT COURT
V. 92-CR-30
92-CR-29
92-CR-27

COMMONWEALTH OF KENTUCKY — RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

ENTERED March 14, 1995.

Robert F. Stephens
Chief Justice

3-17-95
K Riggs D.C.

BEST AVAILAB

AOC-450
Rev. 5-90

Commonwealth of Kentucky
Court of Justice

Case No. 92-CR-030
Court CIRCUIT
County GRAVES

JUDGMENT AND SENTENCE
ON PLEA OF NOT GUILTY
(Jury Trial)

COMMONWEALTH OF KENTUCKY

V.

VERNON JACKSON

Defendant

The defendant at arraignment entered a plea of not guilty to the following charges contained in the indictment(s) (1) TRAFFICKING IN SCHEDULE 11 CONT. SUB. (CRACK COCAINE (2 COUNTS) (2)_____ (3) _____ which offenses were committed on or about (1) FEB. 15, 1992, when the defendant was _____ years old (2) _____,when the defendant was_____ years old (3)_____ when the defendant was _____ years old. The defendant's date of birth is MARCH 29, 1931. On the day of JANUARY 27, 1993, having appeared in open court with his attorney Honorable LOUIS MANGRUM, the case was tried before a jury which returned the following verdict:

WE, THE JURY, FIND THE DEFENDANT, VERNON JACKSON, GUILTY OF TRAFFICKING IN COCAINE, A SCHEDULE 11 CONTROLLED SUBSTANCE, UNDER INST. NO 11 S/JOSEPH DWITHT LEE, FOREMAN.

On the 22ND day of FEBRUARY, 1993 the defendant appeared in open court ☐ without an attorney ☒ with his attorney HON. LOUIS MANGRUM and the court inquired of the defendant and his attorney whether they had a legal cause to show why judgment should not be pronounced, and afforded the defendant and his attorney the opportunity to make statements in the defendant's behalf and to present any information in mitigation of punishment, and the court having informed the defendant and his attorney of the factual contents and conclusions contained in the written report of the presentence investigation prepared by the Division of Probation and Parole and provided defendant's attorney with a copy of the report although not the sources of confidential information, the defendant ☐ agreed with the factual contents of said report ☐ was granted a hearing to controvert the factual contents of the report. Having given due consideration to the written report of the Division of Probation and Parole, and to the nature and circumstances of the crime, and to the history, character and condition of the defendant, the court is of the opinion:

"ENTERED"
FEB 22 1993
JOE STEWART, CLERK
BY _____ D.C.

LABLE COPY

☒ that imprisonment is necessary for the protection of the public because:

_____A. there is a substantial risk that defendant will commit another crime during any period of probation, probation with an alternative sentencing plan, or conditional discharge.

__✓__B. the defendant is in need of correctional treatment that can be provided most effectively by the defendant's commitment to a correctional institution.

__✓__C. probation, probation with an alternative sentencing plan, or conditional discharge would unduly depreciate the seriousness of the defendant's crime.

_____D. the defendant is not eligible for probation, probation with an alternative sentencing plan, or conditional discharge because of the applicability of KRS 532.080 or KRS 533.060

☐ that the defendant is eligible for probation, probation with an alternative sentencing plan, or conditional discharge as hereinafter ordered.

No sufficient cause having been shown why judgment should not be pronounced, it is ADJUDGED BY THE COURT that the defendant is GUILTY of the following charge(s):

TRAFFICKING IN SCHEDULE 11 CONTROLLED SUBSTANCE, (CRACK COCAINE) 2 COUNTS

and is sentenced to: COUNT 1 - FIVE (5) YEARS, COUNT 11 - FIVE (5) YEARS TO RUN CONSECUTIVELY

☐ fine of $_____ to be paid _____.

☒ imprisonment for a maximum term of TEN (10) YEARS and

a fine of $ _____ to be paid _____, pro-bated/probated with an alternative sentence as stated in the attached Order of Probation. (No fine imposed on KRS Chapter 31 indigent defendant).

☐ imprisonment for a maximum term of _____ and

a fine of $ _____ to be paid _____, conditionally discharged as stated in the attached Order of Conditional Discharge. (No fine imposed on KRS Chapter 31 indigent defendant).

☐ imprisonment for a maximum term of _____ in _____ (institution) to run ☐ concurrently ☐ consecutively with a previous sentence imposed _____.

It is further ORDERED that the defendant be delivered to the custody of the Corrections Cabinet at such location within this Commonwealth as the Cabinet shall designate.

It is further ORDERED that the defendant is hereby credited with time spent in custody prior to sentence, namely 30 days as certified by the jailer of GRAVES towards service of the maximum term of imprisonment (or toward payment of a fine at the rate of $5 per day).

After imposing sentence, the court informed the defendant that he has a right to appeal with the assistance of an attorney; that if he is financially unable to afford an appeal, a record will be prepared for him at public expense and an attorney will be appointed to represent him; that an appeal must be taken within 10 days of the date of entry of this judgment, and that the clerk of the court will prepare and file a notice of appeal for him within that time if he so requests. Pending appeal, the defendant is ☐ remanded to custody ☐ released on bail in the amount of $_____.

☐ If there are no findings of guilt shown above, the charges are hereby dismissed and the defendant is discharged.

FEBRUARY 22, 1993
Date

Judge

Judgment entered and notice of entry served on the defendant by mailing a true copy to defendant's attorney of record, HON. LOUIS MANGRUM, postage prepaid, on FEB. 22, 1993.

I hereby certify the foregoing to be a true and correct copy of a document that is on file in this office. File number 92CR63. Witness my hand and seal this 22nd day of February 1993.

Joe Stewart Circuit Court Graves Co. Ky.

Clerk

by K. Wright D.C.

NOTE TO CLERK: If defendant is sentenced to death or confinement, give two certified copies of this judgment to the sheriff who delivers him to the institution. RCr 11.22.

SHERIFF'S RETURN

AOC-450
Rev. 5-90

Commonwealth of Kentucky
Court of Justice

Case No. 92-CR-029

Court CIRCUIT

County GRAVES

JUDGMENT AND SENTENCE
ON PLEA OF NOT GUILTY
(Jury Trial)

COMMONWEALTH OF KENTUCKY

V.

PERRY JACKSON

Defendant

The defendant at arraignment entered a plea of not guilty to the following charges contained in the indictment(s) (1) TRAFFICKING IN SCHEDULE 11 CONTROLLED SUBSTANCE CRACK COCAINE (2)_____ (3) _____ which offenses were committed on or about (1) FEB. 15, 1992, when the defendant was _____years old (2) _____,when the defendant was_____ years old (3)_____ when the defendant was _____ years old. The defendant's date of birth is _____. On the day of JUNE 29, 1993, having appeared in open court with his attorney Honorable LOUIS MANGRUM, the case was tried before a jury which returned the following verdict:

WE, THE JURY, FIND THE DEFENDANT, PERRY JACKSON, GUILTY OF TRAFFICKING IN COCAINE, A SCHEDULE 11 CONTROLLED SUBSTANCE, UNDER INSTRUCTION NO. 1., S/JOSEPH DWIGHT LEE, FOREMAN.

On the 22ND day of FEBRUARY, 1993 the defendant appeared in open court ☐ without an attorney ☒ with his attorney LOUIS MANGRUM and the court inquired of the defendant and his attorney whether they had a legal cause to show why judgment should not be pronounced, and afforded the defendant and his attorney the opportunity to make statements in the defendant's behalf and to present any information in mitigation of punishment, and the court having informed the defendant and his attorney of the factual contents and conclusions contained in the written report of the presentence investigation prepared by the Division of Probation and Parole and provided defendant's attorney with a copy of the report although not the sources of confidential information, the defendant ☐ agreed with the factual contents of said report ☐ was granted a hearing to controvert the factual contents of the report. Having given due consideration to the written report of the Division of Probation and Parole, and to the nature and circumstances of the crime, and to the history, character and [illegible] the defendant, the court is of the opinion:

ENTERED
FEB 23 1993
JOE STEWART, CLERK
BY _____ D.C.

☒ that imprisonment is necessary for the protection of the public because:

_____A. there is a substantial risk that defendant will commit another crime during any period of probation, probation with an alternative sentencing plan, or conditional discharge.

__✓__B. the defendant is in need of correctional treatment that can be provided most effectively by the defendant's commitment to a correctional institution.

__✓__C. probation, probation with an alternative sentencing plan, or conditional discharge would unduly depreciate the seriousness of the defendant's crime.

_____D. the defendant is not eligible for probation, probation with an alternative sentencing plan, or conditional discharge because of the applicability of KRS 532.080 or KRS 533.060

☐ that the defendant is eligible for probation, probation with an alternative sentencing plan, or conditional discharge as hereinafter ordered.

No sufficient cause having been shown why judgment should not be pronounced, it is ADJUDGED BY THE COURT that the defendant is GUILTY of the following charge(s):

TRAFFICKING IN SCHEDULE 11 CONTROLLED SUBSTANCE (CRACK COCAINE)

and is sentenced to: TEN (10) YEARS

☐ fine of $_____ to be paid _____.

☒ imprisonment for a maximum term of TEN (10) YEARS and

a fine of $ _____ to be paid _____, pro-bated/probated with an alternative sentence as stated in the attached Order of Probation. (No fine imposed on KRS Chapter 31 indigent defendant).

☐ imprisonment for a maximum term of _____ and

a fine of $ _____ to be paid _____, conditionally

discharged as stated in the attached Order of Conditional Discharge. (No fine imposed on KRS Chapter 31 indigent defendant).

☐ imprisonment for a maximum term of _____ in _____ (institution) to run ☐ concurrently ☐ consecutively with a previous sentence imposed _____.

It is further ORDERED that the defendant be delivered to the custody of the Corrections Cabinet at such location within this Commonwealth as the Cabinet shall designate.

It is further ORDERED that the defendant is hereby credited with time spent in custody prior to sentence, namely 65 days as certified by the jailer of GRAVES towards service of the maximum term of imprisonment (or toward payment of a fine at the rate of $5 per day).

After imposing sentence, the court informed the defendant that he has a right to appeal with the assistance of an attorney; that if he is financially unable to afford an appeal, a record will be prepared for him at public expense and an attorney will be appointed to represent him; that an appeal must be taken within 10 days of the date of entry of this judgment, and that the clerk of the court will prepare and file a notice of appeal for him within that time if he so requests. Pending appeal, the defendant is ☑ remanded to custody ☐ released on bail in the amount of $_____.

☐ If there are no findings of guilt shown above, the charges are hereby dismissed and the defendant is discharged.

FEBRUARY 22, 1993
Date

Judge

Judgment entered and notice of entry served on the defendant by mailing a true copy to defendant's attorney of record, HON. LOUIS MANGRUM, postage prepaid, on FEB. 22, 1993.

STATE OF KENTUCKY
COUNTY OF GRAVES

I hereby certify the foregoing to be true and correct copy of a judgment on file in this office.
File number 93CR025
Witness my hand and seal this 24th day of Feb 1993
Joe Stewart, Clerk

Joe Stewart Clerk

by K. Wright D.C.

NOTE TO CLERK: If defendant is sentenced to death or confinement, give two certified copies of this judgment to the sheriff who delivers him to the institution. RCr 11.22.

K. Wright D.C.

SHERIFF'S RETURN

AOC-450
Rev. 5-90

Commonwealth of Kentucky
Court of Justice

Case No. 92-CR-027
Court CIRCUIT
County GRAVES

JUDGMENT AND SENTENCE
ON PLEA OF NOT GUILTY
(Jury Trial)

COMMONWEALTH OF KENTUCKY

V.

JERRY JACKSON

Defendant

The defendant at arraignment entered a plea of not guilty to the following charges contained in the indictment(s) (1) TRAFFICKING IN SCHEDULE 11 CONTROLLED SUBSTANCE, (CRACK COCAINE) (2)_____ (3) _____ which offenses were committed on or about (1) FEB. 18, 1992, when the defendant was _____years old (2) _____,when the defendant was_____ years old (3)_____ when the defendant was _____ years old. The defendant's date of birth is JUNE 29, 1953. On the day of 27TH JANUARY, 1993, having appeared in open court with his attorney Honorable LOUIS MANGRUM, the case was tried before a jury which returned the following verdict:
WE, THE JURY, FIND THE DEFENDANT, JERRY JACKSON, GUILTY OF TRAFFICKING IN COCAINE, A SCHEDULE 11 CONTROLLED SUBSTANCE, UNDER INST. NO. 11. S/JOSEPH DWIGHT LEE, FOREMAN.

On the 22ND day of FEBRUARY, 1993 the defendant appeared in open court ☐ without an attorney ☒ with his attorney LOUIS MANGRUM and the court inquired of the defendant and his attorney whether they had a legal cause to show why judgment should not be pronounced, and afforded the defendant and his attorney the opportunity to make statements in the defendant's behalf and to present any information in mitigation of punishment, and the court having informed the defendant and his attorney of the factual contents and conclusions contained in the written report of the presentence investigation prepared by the Division of Probation and Parole and provided defendant's attorney with a copy of the report although not the sources of confidential information, the defendant ☐ agreed with the factual contents of said report ☐ was granted a hearing to controvert the factual contents of the report. Having given due consideration to the written report of the Division of Probation and Parole, and to the nature and circumstances of the crime, and to the history, character and condition of the defendant, the court is of the opinion:

ENTERED
FEB 22 1993
JOE STEWART, CLERK
BY _____ D.C.

☒ that imprisonment is necessary for the protection of the public because:

_____A. there is a substantial risk that defendant will commit another crime during any period of probation, probation with an alternative sentencing plan, or conditional discharge.

__✓__B. the defendant is in need of correctional treatment that can be provided most effectively by the defendant's commitment to a correctional institution.

__✓__C. probation, probation with an alternative sentencing plan, or conditional discharge would unduly depreciate the seriousness of the defendant's crime.

_____D. the defendant is not eligible for probation, probation with an alternative sentencing plan, or conditional discharge because of the applicability of KRS 532.080 or KRS 533.060

☐ that the defendant is eligible for probation, probation with an alternative sentencing plan, or conditional discharge as hereinafter ordered.

No sufficient cause having been shown why judgment should not be pronounced, it is ADJUDGED BY THE COURT that the defendant is GUILTY of the following charge(s):

TRAFFICKING IN SCHEDULE 11 CONTROLLED SUBSTANCE, CRACK COCAINE

and is sentenced to: TEN (10) YEARS

☐ fine of $_____ to be paid _____.

☒☒ imprisonment for a maximum term of TEN (10) YEARS and

a fine of $ _____ to be paid _____, pro-bated/probated with an alternative sentence as stated in the attached Order of Probation. (No fine imposed on KRS Chapter 31 indigent defendant).

☐ imprisonment for a maximum term of _____ and

a fine of $ _____ to be paid _____, conditionally

discharged as stated in the attached Order of Conditional Discharge. (No fine imposed on KRS Chapter 31 indigent defendant).

☐ imprisonment for a maximum term of _____ in _____ (institution) to run ☐ concurrently ☐ consecutively with a previous sentence imposed _____.

It is further ORDERED that the defendant be delivered to the custody of the Corrections Cabinet at such location within this Commonwealth as the Cabinet shall designate.

It is further ORDERED that the defendant is hereby credited with time spent in custody prior to sentence, namely 66 days as certified by the jailer of GRAVES towards service of the maximum term of imprisonment (or toward payment of a fine at the rate of $5 per day).

After imposing sentence, the court informed the defendant that he has a right to appeal with the assistance of an attorney; that if he is financially unable to afford an appeal, a record will be prepared for him at public expense and an attorney will be appointed to represent him; that an appeal must be taken within 10 days of the date of entry of this judgment, and that the clerk of the court will prepare and file a notice of appeal for him within that time if he so requests. Pending appeal, the defendant is ☑ remanded to custody ☐ released on bail in the amount of $_____.

☐ If there are no findings of guilt shown above, the charges are hereby dismissed and the defendant is discharged.

FEBRUARY 22, 1993
Date

John M. Rhoads
Judge

Judgment entered and notice of entry served on the defendant by mailing a true copy to defendant's attorney of record, HON. LOUIS MANCRUM, postage prepaid, on FEB. 22, 1993.

STATE OF KENTUCKY
County of Graves

I hereby certify the foregoing to be a true and correct copy of a judgment that is on file in this office.
File number 93CR27.
Witness my hand and seal this 24th day of February, 1993.

Joe Stewart, Clerk
Graves County Circuit Court

Joe Stewart Clerk

by K. McCuiston D.C.

NOTE TO CLERK: If defendant is sentenced to death or confinement, give two certified copies of this judgment to the sheriff who delivers him to the institution. RCr 11.22.

SHERIFF'S RETURN

FILED
DATE 5/1/95
JOE STEWART, CLERK
GRAVES COUNTY CIRCUIT COURT
BY

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS OF KENTUCKY
CRIMINAL ACTION NOS.
93-CA-000585-MR
93-CA-000586-MR
93-CA-000587-MR
93-CA-000588-MR

LOUIS V. MANGRUM, VERNON JACKSON, PERRY JACKSON AND JERRY JACKSON — APPELLANTS

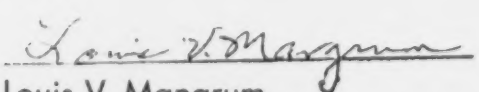
VS. JOINT NOTICE OF APPEAL

COMMONWEALTH OF KENTUCKY, — APPELLEE

The appellants in the Court of Appeals of Kentucky, Louis V. Mangrum, Vernon Jackson, Perry Jackson and Jerry Jackson, state that they are the joint appellants herein and hereby give notice to the appellee in the Court of Appeals of Kentucky, Commonwealth of Kentucky, which is the appellee herein, that the joint appellants, Louis V. Mangrum, Vernon Jackson, Perry Jackson and Jerry Jackson, hereby appeal to the Supreme Court of The United States of America from the Opinion And Order Dismissing dated and entered on September 23, 1994, in Criminal Action No. 93-CA-000585-MR, on which the Supreme Court of Kentucky entered an Order Denying Discretionary Review on February 8, 1995, and Opinion Affirming dated and entered on October 21, 1994, in Criminal Action Nos. 93-CA-000586-MR, 93-CA-000587-MR and 93-CA-000588-MR, on which the Supreme Court of Kentucky entered and Order Denying Discretionary Review on March 14, 1995.

On Motion To Join All Appeals In The Three Cases Above For Purpose Of Perfecting Their Appeals To This Court, which was filed in The Court of Appeals of Kentucky, and Motion To Dismiss Louis V. Mangrum As Appellant, The Court Of Appeals Of Kentucky entered an Order on July 26, 1993, wherein it

denied the motion to dismiss Louis V. Mangrum as an appellant from case number 92-CR-030 wherein his fee for representing the appellant, Vernon Jackson, was involved making it necessary he be a party to the appeal as well as the appellant, Vernon Jackson, in said case in order for both to obtain the relief to which they were entitled, which was to release the property of the appellant, Vernon Jackson, so he could utilize same for making bond and paying his attorney, the appellant, Louis V. Mangrum; and the Court Of Appeals Of Kentucky, dismissed four appeals as taken prematurely and separated the appeal of the appellant, Louis V. Mangrum, which was prejudicial to both appellants, Louis V. Mangrum and Vernon Jackson, from action number 92-CR-030 in the Graves Circuit Court as shown by the record herein and the cases of Hutchinson, v. Hutchinson, 293 Ky, 270, 168 S. W. 2d. 738, 1943, Franklin Fiscal Court v. Stewart, Ky. App., 757 S.W. 2d 194, 1988, both make attorney a "party" to the litigation, and U.S. v. Michelle's Lounge, 39 F. 3rd. 684, 701, 1994; and the Court Of Appeals Of Kentucky consolidated the three appeals of the appellants, Vernon Jackson, from 92-CR-030, Perry Jackson, from 92-CR-029, and Jerry Jackson, from 92-CR-027, for the purpose of perfecting their appeals and the appellants. Perry Jackson and Jerry Jackson, herein were likewise prejudiced by the severance of the appeal of Louis V. Mangrum, as shown by the record herein and the above cited cases.



Louis V. Mangrum
Attorney for appellants
Mangrum Building
427 East Broadway
Mayfield, Kentucky 42066-2489
Tel. 502-247-6702

CERTIFICATE

I, Louis V. Mangrum, attorney for the appellants, Louis V. Mangrum, Vernon Jackson, Perry Jackson and Jerry Jackson, hereby certify that I have served copies of Joint Notice Of Appeal on the appellee, Commonwealth of Kentucky, by mailing copies to Hon. Brereton Jones, Governor of Commonwealth of Kentucky, at Capitol Building, Frankfort, Kentucky 40601, Hon. Chris Gorman, Attorney General of Commonwealth of Kentucky, at Criminal Appellate Division, Office Of The Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, and Hon. Sharon K. Hilborn, Assistant Attorney General, Criminal Appellate Division, Office Of The Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, all with postage prepaid this the 27th day of April, 1995.

Louis V. Mangrum

Louis V. Mangrum, Atty

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT
Indictment No. 92-CR-030

COMMONWEALTH OF KENTUCKY PLAINTIFF

LIS PENDENS

VERNON JACKSON DEFENDANT

Please take notice that the Commonwealth of Kentucky intends to file a Motion for Forfeiture in the Graves Circuit Court, as numbered and styled above affecting the right, title, claim and interest of Vernon Jackson and wife, Georgia Jackson, in property described in the complaint and located in Graves County, Kentucky, to-wit:

> Lot No. 1, Section C, of the Southland Subdivision, as shown in Cabinet B, File 104, in the Graves County Court Clerk's Office.
>
> Being the same real estate conveyed to Vernon Jackson and wife, Georgia Jackson, by deed from Sandra J. Moffitt, a single person dated June 9, 1988, of record in Deed Book 315, Page 53, Graves County Clerk's Office.

The basis for the motion will be the use of said property for trafficking in cocaine.

Respectfully Submitted,

Richard Weisenberger

Richard Weisenberger

COMMONWEALTH'S ATTORNEY

Attested Copies to:

Graves County Clerk
Attorney for Defendant

STATE OF KENTUCKY,
COUNTY OF GRAVES. SCT.

I, Glen Bruce, Clerk of the County in and for the State and County aforesaid do certify that this instrument was lodged in my office for record on the 16 day of April, 1992 at 4:04 pm o'clock and the same and the foregoing and this certificate have been duly recorded in Encumbrance Book 21, Page 501, in the Graves County Clerk's Office this the 17 day of April, 1992.

GLEN BRUCE, CLERK

By _____ D.C.

AOC-365 Rev. 9-91

B

Citation No. _____ CIRCUIT Court Case No. 92-CR-030

3-30-92 GRAVES County Charge Traff Sch II-Cocaine

Commonwealth of Kentucky

Vernon Jackson 1001 S. 14th St. Mayfield, Ky N/A

Defendant's Name Defendant's Address Defendant's Phone No.

YOU ARE HEREBY RELEASED FROM CUSTODY ON THE CONDITIONS INDICATED BELOW:

PERSONAL PROMISE		PERSONAL RECOGNIZANCE. Your personal recognizance, provided that you promise to appear at all scheduled hearings, trials, or otherwise as required by the Court
MONEY BOND OF $20,000 PROP Amount in accordance with uniform schedule of bail YES ___ NO ___	☐	UNSECURED BAIL BOND. An unsecured appearance bond from you or your surety to be forfeited should you fail to appear as required by the Court.
	☐	GUARANTEED ARREST BOND CERTIFICATE.
	☐	PARTIALLY SECURED BOND. Cash bail secured by a cash deposit of $_____. 90% of the deposit (but not less than $5) will be returned if you are found guilty and the court determines that you have performed the conditions of your release. The entire cash bond to be forfeited should you fail to appear as required by the Court.
	☐	CASH BAIL BOND. Full amount of bail paid into the court, to be forfeited should you fail to appear as required by the Court.
	☒	STOCKS AND BONDS, PROPERTY BOND. Property is offered to secure the bail bond. If you fail to appear as required by the Court the state will foreclose on the property used as security.
	☐	RELEASED PURSUANT TO KRS 222.204_____
	☐	CONDITIONS:_____

BAIL BOND Vernon Jackson being admitted to bail in the sum of $20,000 PROPERTY we undertake that he will appear and be amenable to the orders and process of this and any other court in which this proceeding may be pending hereafter for any and all purposes and at all stages of the proceeding (including, in event of indictment, proceedings thereafter) in accordance with RCr.4.54. By entering into this bond obligation, I do hereby submit to the jurisdiction of the courts of Kentucky in which any forfeiture proceeding arising out of my bail obligation, may be pending, and do further irrevocably appoint the clerk of such court as my agent upon whom any process affecting my liability on such bond may be served, such clerk to forthwith mail copies to me at the address below. AFFIDAVIT OF SURETY on Unsecured or Partially Secured Bond: I hereby affirm

that I am a resident or owner of real estate in Kentucky, and intend to secure this bond with the following stocks, bonds or real property: 1001 S. 14th St. Mayfield, Ky 42066 (Graves Co.)

Vernon Jackson — 1001 S. 14th St. Mayfield
(Signature of Defendant) (Address)

X Georgia Jackson — X 1001 South 14th St Mayfield Ky
(Signature of Surety) (Address)

☐ Defendant
BAIL BOND TAKEN BY C. Glover DC FROM ☐ Surety

Violation of Conditions:

You are warned that failure to comply with the above provisions will be deemed to be a violation of the terms and conditions of your release for which a warrant may be issued for your arrest; you may be detained, the release privilege revoked, and any bail bond posted may be forfeited.

Failure to Appear:

For any failure to appear as required before a judge or other judicial officer, you shall be subject to the following penalties:

(IF FELONY CHARGE) A fine to be determined by the Court not more than $10,000 and imprisonment for not less than 1 and not more than 5 years.

(IF MISDEMEANOR CHARGE) A fine of not more than $500 and imprisonment for not more than 1 year.

NEXT DUE BACK: Ciruit Ct. in courtroom ____ at 9:00 A.M. on April 13, 1992 or when notified and you must appear at all subsequent continued dates. You must also appear _____.

DEFENDANT'S SIGNATURE ▸ Vernon Jackson

I understand the penalties which may be imposed on me for willful failure to appear or for violation of any condition of release and agree to comply with the conditions of my release and to appear as required. I have received a copy of this order and any bail bond.

☐ REPORT TO YOUR LOCAL PRETRIAL RELEASE AGENCY

LOCATED AT Graves Co. Cthse. Mayfield, Ky
PHONE 247-4862
WITNESSED BY William Bell PreTrial Officer
WBell

JUDGE John Daughaday Circuit COURT
BOND FEE ☒ PAID ☐ NOT PAID

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT
CRIMINAL ACTION No. 92-CR-027

COMMONWEALTH OF KENTUCKY, PLAINTIFF

VS.

JERRY JACKSON, DEFENDANT

AND Criminal Action No. 92-CR-029

COMMONWEALTH OF KENTUCKY, PLAINTIFF

VS.

PERRY JACKSON, DEFENDANT

AND Criminal Action No. 92-CI-030

COMMONWEALTH OF KENTUCKY, PLAINTIFF

VS. NOTICE OF AND MOTION TO COMPEL RELEASE OF LIS PENDENS FILED BY THE PLAINTIFF ON APRIL 16, 1992, IN GRAVES COUNTY CLERK'S OFFICE ALONG WITH A DETERMINATION OF PRIORITY OF LIENS

VERNON JACKSON, DEFENDANT

The defendants, Jerry Jackson, Perry Jackson and Vernon Jackson, hereby give the plaintiffs, Commonwealth of Kentucky, notice they will, by counsel, on January 11, 1993, at 9:00 A.M. O'clock, or as soon thereafter as practicable, appear before the Hon. John T. Daughaday, Judge of Graves Circuit Court, or in the event of his absence before anyone sitting in his place and stead, in the Circuit Court Room in the Courthouse in

Mayfield, Kentucky, and move that the Lis Pendens filed by the plaintiffs, Commonwealth of Kentucky of record in Encumbrance Book 21 page 501 in the Graves County Clerk's Office be released by the plaintiff, Commonwealth of Kentucky, because KRS 218A.405 through KRS 218A.460 is unconstitutional under the Constitution of Kentucky, Article 11 which gives the defendants, Jerry Jackson, Perry Jackson and Vernon Jackson, the right to counsel of their choice when said defendants have to rely on the proceeds from the sale of said property in presenting their defenses and paying the costs thereof and also violates the Sixth Amendment to the Constitution of the United States for the same reason. That said Lis Pendens evidentally was filed under KRS 382.440 which is likewise unconstitutional under Article 11 of the Constitution of Kentucky and the Sixth Amendment of the Constitution of the United States for the same reason as applied in this case. That the plaintiffs, Commonwealth of Kentucky, knew at the time they filed their Lis Pendens that the defendant, Vernon Jackson, was represented by Louis V. Mangrum as his attorney who had an Attorney's Lien pursuant to KRS 376.460 which is superior to the forfeiture lien of the plaintiff, Commonwealth of Kentucky.

WHEREFORE, defendants demand:

1. That this Court order the plaintiff, Commonwealth of Kentucky release the Lis Pendens filed in Encumbrance Book 21 page 501 to enable the defendants to utilize said property in preparing their defense herein for costs and attorney fees.

2. Find that the attorney's lien constitutes a first and best lien on said property as between the parties and their counsel herein.

3. Any and all relief to which they are entitled.

Louis V. Mangrum
Attorney for defendants
Mangrum Building
427 East Broadway
Mayfield, Kentucky 42066-2489
Tel. 502-247-6702

CERTIFICATE

I, Louis V. Mangrum, attorney for the defendants, Jerry Jackson, Perry Jackson and Vernon Jackson, hereby certify that I served a copy of Notice Of And Motion To Compel Release Of Lis Pendens Filed By The Plaintiff On April 16, 1992, In Graves County Clerk's Office Along With A Determination Of Priority Of Liens on the plaintiffs, Commonwealth of Kentucky, by delivering a copy of same to Hon. Richard Weisenberger, Commonwealth Attorney, at his office at 423 East Broadway, Mayfield, Kentucky, this the 8th. day of January, 1993.

Louis V. Mangrum, Atty

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

A COPY ATTEST
JOE STEWART, CLERK
GRAVES COUNTY CIRCUIT COURT
D.C.

Indictment No. 92-CR-030

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

VERNON JACKSON, — DEFENDANT

Indictment No. 92-CR-027

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON — DEFENDANT

Indictment No. 92-CR-029

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

PERRY JACKSON — DEFENDANT

ORDER

By previous Order of the Court, pending Motions in the above three criminal actions were held before the Court on this date. The Defendants were present and represented by Hon. Louis Mangrum, and the Commonwealth of Kentucky was represented by Hon. Richard Weisenberger, Commonwealth's Attorney.

The Commonwealth had filed Motions to consolidate for trial Count I of Indictment No. 92-CR-030 of the Defendant,

Vernon Jackson, with Indictment No. 92-CR-029 of the Defendant, Perry Jackson. It is the Commonwealth's opinion that both of these offenses were alleged to have occurred at the same time, place, and date of February 15, 1992.

The Commonwealth also moved to consolidate for trial Count II of Indictment No. 92-CR-030 of the Defendant, Vernon Jackson, with Indictment No. 92-CR-027 of the Defendant, Jerry Jackson, again alleging that the events described in those indictments occurred at the same time, place, and date of February 18, 1992. All Motions to Consolidate were opposed by counsel for the Defendants.

After hearing arguments of counsel, the Court entered an Order granting the Commonwealth's Motions to Consolidate and assigning trial dates as follows: Count I of Indictment 92-CR-030 against Vernon Jackson and Indictment No. 92-CR-029 against Perry Jackson are consolidated for trial before a jury of the Graves Circuit Court beginning Thursday, October 15, 1992, at 9:00 a.m., said case being the second case on the Court's trial docket for that date. Count II of Indictment No. 92-CR-030 against Vernon Jackson and Indictment No. 92-CR-027 against Jerry Jackson are consolidated for trial before a jury of the Graves Circuit Court beginning Tuesday, January 26, 1993 at 9:00 a.m.

The Motion on behalf of all above Defendants to quash the indictments was argued before the Court this date, and the Court being sufficiently advised, **NOW DENIES** said Motion to Quash. Likewise, the Motions on behalf of all Defendants to suppress all evidence against them was also argued before the Court this date, and the Court being sufficiently advised, **NOW DENIES** said Motion to Suppress.

WITNESS MY HAND this 23rd day of June, 1992.

John T. Daughaday, JUDGE
GRAVES CIRCUIT COURT

COPIES TO:
Hon. Richard Weisenberger
Hon. Louis Mangrum

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

COPY ATTEST
STEWART, CLERK
COUNTY CIRCUIT COURT
D.C.

Indictment No. 92-CR-029

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

PERRY JACKSON — DEFENDANT

Indictment No. 92-CR-030

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

VERNON JACKSON — DEFENDANT

ORDER

By previous Orders of this Court, the above criminal actions, including the one Count of Indictment No. 92-CR-029 against Perry Jackson and Count I of a two Count Indictment, No. 92-CR-030, against Vernon Jackson, were scheduled to come on for trial before a jury of the Graves Circuit Court beginning Tuesday, October 13, 1992. The Commonwealth was represented by the Hon. Richard Weisenberger, and the Defendants were represented by Hon. Louis Mangrum.

On October 13, 1992, prior to the draw of prospective jurors for purposes of voir dire, the Court was informed that a witness subpoenaed by both parties, namely, James Isabell, was not present and had apparently concealed himself so as not to be available to testify. The Court continued the trial until Wednesday, October 14, 1992, to give authorities an opportunity to locate James Isabell, and the Court issued a Bench Warrant charging Mr. Isabell with contempt of Court for

failure to appear pursuant to his subpoena.

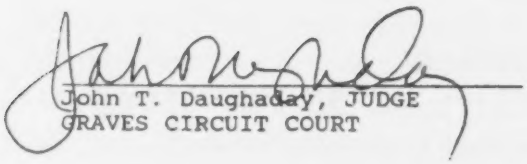
On this date, the parties and counsel appeared before the Court regarding the unavailability of the witness, James Isabell, and the Commonwealth moved to reschedule the above case for trial and cited the Court to **RCr 7.02** and **RCr 9.04** and the holding in the case of **Fannin v. Commonwealth, Ky. 331 S.W. 2d 727 (1960).** Counsel for the Defendants moved to dismiss these charges because of the unavailability of James Isabell, who is described by defense counsel as a paid informant acting on behalf of the police in the alleged transactions wherein the Defendants are accused of selling a quantity of crack cocaine to an undercover police agent who was introduced to the Defendants by the missing witness, Isabell.

The Court, being sufficiently advised in these actions, **NOW GRANTS** a continuance of the pending charges against the Defendants and **ORDERS** that these cases be rescheduled for trial by jury in the Graves Circuit Court beginning Tuesday, January 26, 1993, and **FURTHER ORDERS** that the Defendants' bonds shall be continued until said trial date.

The Motion of the Defendants, by counsel, to dismiss the indictments because of the unavailability of James Isabell, is **DENIED.**

IT IS FURTHER ORDERED that the Commonwealth is **GRANTED** leave to file a motion in this case to consolidate for the purposes of trial pursuant to **RCr 9.12** the above pending criminal actions with the remaining Count II of Indictment No. 92-CR-030 against the Defendant, Vernon Jackson, and the one Count of Indictment No. 92-CR-027 against the Defendant, Jerry Jackson. After the Commonwealth files such motion, same shall be noticed for hearing before the Court at a regularly scheduled criminal motion hour.

WITNESS MY HAND this 15th day of October, 1992.



John T. Daughaday, JUDGE
GRAVES CIRCUIT COURT

COPIES TO:

Hon. Richard Weisenberger
Hon. Louis Mangrum
Mr. Will Bell

MR. MANGRUM: Well, you need to at least consider the shock probation and so forth.

THE COURT: WELL, I CAN'T SHOCK PROBATE THEM, MR. MANGRUM, UNTIL I SENTENCE THEM. I WILL SENTENCE THEM FIRST AND THEN WE WILL PROCEED WITH YOUR MOTIONS.

MR. MANGRUM: Well, I'm asking, Your Honor, under 533 to reduce the sentence, and so forth.

THE COURT: WHY WOULD I WANT TO DO THAT? THE JURY SET IT.

MR. MANGRUM: Well, you have the authority.

THE COURT: I HAVE THE AUTHORITY BUT I CHOOSE NOT TO EXERCISE THAT.

MR. MANGRUM: Well, of course, if you are not going to do it, then, you've overruled that and of course... but I think really, you should hear the Motion for a New Trial first.

THE COURT: ALRIGHT. I WILL HEAR YOUR MOTION FOR A NEW TRIAL, MR. MANGRUM. WHAT IS YOUR MOTION?

MR. MANGRUM: Well, let me get it then.

THE COURT: MR. MANGRUM, ARE YOU READY?

MR. MANGRUM: Yeah, just a second here.

MR. WEISENBERGER: Are we taking up the Motion for a New Trial first?

THE COURT: THAT IS FIRST AND I HAVE ALREADY DENIED HIS MOTION TO REDUCE THE SENTENCE IN THIS CASE AND THAT LEAVES THE SENTENCING AND THE MOTION FOR SHOCK PROBATION. SHOCK PROBATION WOULD NOT BE TIMELY MADE, MR. MANGRUM. SHOCK PROBATION, THEY HAVE TO BE IN CUSTODY AT LEAST THIRTY DAYS.

MR. MANGRUM: That's right, but this...

THE COURT: NOW, YOU CAN MOVE FOR REGULAR PROBATION UNDER THE STATUTE.

MR. MANGRUM: That's what I'm doing.

THE COURT: ALRIGHT. LET'S TAKE UP YOUR MOTION FOR A NEW TRIAL.

MR. MANGRUM: It's a Motion for Probation or Conditional Discharge. Well, Your Honor, as The Court will probably recall...as The Court probably recalls, the crack cocaine - alleged crack cocaine - was purchased - allegedly purchased - from Perry Jackson and Vernon Jackson on February the 15th, 1992 and Captain Gordon put both of those rocks in one bag and they got crushed in the mail and went to Henson and he tested it and there was a trace of cocaine in it, but, obviously, there's nobody on earth now knows where the cocaine came from and which rock was which; and I asked him then when he was testifying what other substances were contained and the amount and he said he didn't know. He didn't check it. Now, obviously, that is incompetent evidence completely. It's contradictory. If I gave you two particles and you mixed 'em up, you couldn't tell which was which and know anything about it.

THE COURT: OKAY. DO YOU HAVE ANY OTHER BASIS FOR YOUR MOTION OTHER THAN THAT?

MR. MANGRUM: Well, yeah. Actually, they...then, the one that was bought the 18th, they put the name of Perry Jackson, Jerry Jackson and Vernon Jackson in that bag and sent it to Officer Henson and obviously, Perry Jackson wasn't involved in that if it was the 18th purchase. But evidently, they must have got the names mixed up 'cause the other bag had just Perry Jackson's name in it and didn't have Vernon's. So, the way they handled it...the way they handled the chain there, there was testimony that he, Captain Gordon mailed it certified mail and Henson swore that he got it by registered mail; and it just... they handled it so badly that you can't...it's just guess work - speculation on what did happen and what it was.

THE COURT: WHAT OTHER GROUNDS DO YOU HAVE, MR. MANGRUM, FOR YOU MOTION FOR A NEW TRIAL?

MR. MANGRUM: Well, I haven't finished with the Notwithstanding the Verdict, yet. There is another thing that if The Court recalls, back when these cases were consolidated, I objected on account of they were all three in the same family and it would sound bad to a jury for three people out of the same family to be tried for selling crack cocaine. But, of course, they were consolidated and then as The Court knows, the witnesses were admonished not to refer to the purchase of the cocaine or the alleged purchase from Mr. Vernon Jackson's daughter and sister to the other two defendants and in spite of that, that paid informer, Kenny McCampbell testified that he just before this, purchased two rocks of cocaine from Shirley Jackson at the same residence. Now, obviously, I ask The Court to admonish the Jury to disregard that and The Court did. But when I got to thinking about it, it was too bad for them and if The Court remembers, I moved for a mistrial in Chambers and

The Court overruled that. But there is no question that that was so prejudicial that it... there wasn't no way to cure that and we need a Judgment Notwithstanding the Verdict as to that as far as the Jury was so prejudiced that their verdict, it's just no good under that kind of evidence - under those kinds of facts. Now, obviously...

> THE COURT: WHAT OTHER GROUNDS DO YOU HAVE, MR. MANGRUM? I WANT YOU TO GET THESE GROUNDS OUT SO THAT MR. WEISENBERGER CAN RESPOND TO THEM.

MR. MANGRUM: Well, of course, as The Court knows, all the testimony by the officers was so contradictory that it was just not capable of supporting a Judgment beyond a reasonable doubt. For example, Officer Acree testified that he and James Isabell followed Perry Jackson and that they followed him from the time they first come in contact with him until they made the purchase at the Wishy-Washy Laundry. Then, Officer Lear testified that he and Captain Gordon and Darnell followed him and that he recognized Perry from the side of his face when he pulled out on Broadway. Well, now, they couldn't all have been following him and be close enough to recognize that; and then, as it turns out, he admits they was going the opposite direction. All this happened within fifteen minutes that they come by the laundry mat going in the opposite direction and when they got up to Gibson's Parking Lot, they warned the other people - the back up - that they were too close and they were, of course, across the street - Broadway there - at that parking lot before that used to be a laundry mat. There's some little something there now. I don't know myself what that was. But, now, obviously, that kind of testimony is beyond belief. It just doesn't make sense. Now, they, of course, Mr. Weisenberger told the Jury in his Opening Statement that all of them saw the purchase through a van window and that they was on the same parking lot. Well, of course, when I questioned all of the officers, they each said they didn't ever say

that. But, evidently, there was some mix up in what was said that led him to believe that and of course, then, to be further contradictory, some of them said you could hear the tapes loud and clear and some of them said you couldn't; and the same people were in the same car, the same officers, and obviously, the tapes themselves speak for it. They are inaudible, basically. There's no where on those tapes that I've heard and I got some that wasn't even related. The Court wouldn't let them be introduced on account of it was March the 18th or something and some of them that I got was supposed to be the right dates were inaudible. You couldn't hear nothing. One of them was just jabbering.

> THE COURT: WHAT OTHER GROUNDS, MR. MANGRUM? I'M NOT GOING TO SIT HERE WHILE YOU GO THROUGH ALL THE TESTIMONY OF ALL THE WITNESSES THAT WERE CALLED THREE OR FOUR TIMES.

MR. MANGRUM: Well, I'm trying to recall for The Court what...

> THE COURT: DID YOU PUT ALL...

MR. MANGRUM: I assume that you read my motion.

> THE COURT: DID YOU PUT ALL YOUR GROUNDS IN YOUR MOTION?

MR. MANGRUM: In the Motion Notwithstanding the Verdict and a New Trial, yeah.

> THE COURT: MR. WEISENBERGER, DOES THE COMMONWEALTH WANT TO RESPOND TO ANY OF THOSE?

MR. MANGRUM: Well, I haven't finished yet.

THE COURT: WELL, I CAN READ THE MOTION, MR. MANGRUM.

MR. WEISENBERGER: Your Honor, he makes a point that the two samples of crack cocaine were put in one bag. My recollection was that the Officer, the Lab Technician testified that he tested the entire sample and that that sample contained cocaine which would include both rocks. With respect to Shirley Jackson, the Jury was fully admonished and as I recall, that was a question on Cross Examination by Mr. Mangrum which elicited that response about her selling drugs. There is almost no conflict of evidence on material issues. Mr. Mangrum took a great deal of time to talk to each officer about what happened leading up to the sale and there were two separate surveillance vehicles and he took a lot of time to go into where everybody was at a certain time and there were minor discrepancies but all the witnesses were quite positive in their recollection of what happened at the time of the sale which took place there at the laundry mat and later at Mr. Jackson's home. Mr. Mangrum had an opportunity to argue these points to the Jury - the discrepancies that he felt were present. In respect to the Opening Statement, the parking lot that I was referring to was Gibson's parking lot and I think that I did mis-state to some extent where they were located but it turned out they were on Gibson's parking lot and that is what the Commonwealth proved.

MR. MANGRUM: Well, now, Your Honor, in response to that to kindly give The Court the benefit of the other part in here, now, if The Court recalls, at the close of the trial, I was wanting time to get Mr. Ray Lawrence here as a witness.

THE COURT: YES, I REMEMBER.

MR. MANGRUM: And The Court closed the case. I suggested to The Court that we finish the avowal...

THE COURT: I HAVE ALREADY RULED ON THAT, MR. MANGRUM. DO YOU HAVE ANY OTHER MATTERS THAT YOU WANT TO DISCUSS?

MR. MANGRUM: Well, as I say, back then, I was objecting to The Court hurrying me up.

THE COURT: MR. MANGRUM, I DON'T THINK THE COURT HURRIED YOU UP. YOU CALLED SOME WITNESSES TO TESTIFY FOUR TIMES. I WASN'T GOING TO LET YOU TAKE SIX OR SEVEN WEEKS TO TRY A CASE THAT COULD BE TRIED IN TWO TO THREE DAYS.

MR. MANGRUM: Your Honor, as This Court knows, I objected to...

THE COURT: I KNOW YOU OBJECTED AND I RULED ON IT, MR. MANGRUM. DO YOU HAVE ANY OTHER MATTERS YOU WANT THE COURT TO CONSIDER BEFORE I RULE ON YOUR MOTION?

MR. MANGRUM: Well, naturally, the basis of quashing the evidence has been the Fourth, Fifth and Sixth Amendments of the Constitution of the United States and Article Ten and Eleven of the State.

THE COURT: I RULED ON ALL OF THAT AT PRETRIAL, MR. MANGRUM. I'M NOT GOING BACK THROUGH ALL OF THAT AGAIN, TODAY.

MR. MANGRUM: Of course, I think the purpose of the Motion for a New Trial is to give The Court a second chance. Now, obviously, that's what I'm trying to do and I certainly feel that we are due a new trial. I don't think we had a fair trial in the case due to many, many errors.

THE COURT: YOUR MOTION FOR A NEW TRIAL IS DENIED.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON — DEFENDANT

AND **Criminal Action No. 92-CR-029**

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

PERRY JACKSON — DEFENDANT

AND **Criminal Action No. 92-CR-030**

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

VERNON JACKSON — DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Jury will find the defendant, Vernon Jackson, guilty of Trafficking in a Controlled Substance under this Instruction if, and only if, the Jury believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Graves County, Kentucky, on February 15, 1992, and before the finding of the Indictment herein, the defendant, Vernon Jackson, sold a quantity of Schedule II crack cocaine a Controlled Substance to Lawrence Acree.

AND

(b) That in so doing the defendant, Vernon Jackson, knew the substance being sold was a Schedule II crack cocaine a Controlled Substance.

AND

(c) That the defendant, Vernon Jackson, was not induced to do so by entrapment.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON — DEFENDANT

AND **Criminal Action No. 92-CR-029**

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

PERRY JACKSON — DEFENDANT

AND **Criminal Action No. 92-CR-030**

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

VERNON JACKSON — DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Jury will find the defendant, Vernon Jackson, guilty of Trafficking in a Controlled Substance under this Instruction if, and only if, the Jury believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Graves County, Kentucky, on February 18, 1992, and before the finding of the Indictment herein, the defendant, Vernon Jackson, sold a quantity of Schedule II crack cocaine a Controlled Substance to Lawrence Acree.

AND

(b) That in so doing the defendant, Vernon Jackson, knew the substance being sold was a Schedule II crack cocaine a Controlled Substance.

AND

(c) That the defendant, Vernon Jackson, was not induced to do so by entrapment.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

JERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-029

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

PERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-030

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

VERNON JACKSON DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Jury will find the defendant, Perry Jackson, guilty of Trafficking in a Controlled Substance under this Instruction if, and only if, the Jury believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Graves County, Kentucky, on February 15, 1992, and before the finding of the Indictment herein, the defendant, Perry Jackson, sold a quantity of Schedule II crack cocaine a Controlled Substance to Lawrence Acree.

AND

(b) That in so doing the defendant, Perry Jackson, knew the substance being sold was a Schedule II crack cocaine a Controlled Substance.

AND

(c) That the defendant, Perry Jackson, was not induced to do so by entrapment.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON — DEFENDANT

AND Criminal Action No. 92-CR-029

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

PERRY JACKSON — DEFENDANT

AND Criminal Action No. 92-CR-030

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

VERNON JACKSON — DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Jury will find the defendant, Jerry Jackson, guilty of Trafficking in a Controlled Substance under this Instruction if, and only if, the Jury believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Graves County, Kentucky, on February 18, 1992, and before the finding of the Indictment herein, the defendant, Jerry Jackson, sold a quantity of Schedule II crack cocaine a Controlled Substance to Lawrence Acree.

AND

(b) That in so doing the defendant, Jerry Jackson, knew the substance being sold was a Schedule II crack cocaine a Controlled Substance.

AND

(c) That the defendant, Jerry Jackson, was not induced to do so by entrapment.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON — DEFENDANT

AND **Criminal Action No. 92-CR-029**

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

PERRY JACKSON — DEFENDANT

AND **Criminal Action No. 92-CR-030**

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

VERNON JACKSON — DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the law presumes the defendants, Jerry Jackson, Perry Jackson and Vernon Jackson, or any of them to be innocent of a crime and the Indictments shall not be considered as evidence or as having any weight against them or any of them. The Jury will find the defendants,

Jerry Jackson, Perry Jackson, and Vernon Jackson, or any of them not guilty unless the Jury is satisfied from the evidence alone and beyond a reasonable doubt that the defendants or any of them are guilty. If upon the whole case the Jury have a reasonable doubt that the defendants or any of them are guilty the Jury shall find the defendants or any of them not guilty.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

JERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-029

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

PERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-030

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

VERNON JACKSON DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the defendants, Jerry Jackson, Perry Jackson and Vernon Jackson, or any of the defendants are entitled to the defense of entrapment if the Jury believe from the evidence beyond a reasonable doubt either Lawrence Acree , the purchaser or transferee or any other per-

son, acting in cooperation with either the purchaser or transferee induced or encouraged the defendants, Jerry Jackson, Perry Jackson and Vernon Jackson, or any of the defendants to commit any of the acts mentioned in Instructions numbered_____, _____, _____ and_____.

AND

(a) That Lawrence Acree, the purchaser or transferee or any other person acting in cooperation with said purchaser or transferee or other person was seeking thereby to obtain evidence against the defendants or any of the defendants for the purpose of criminal prosecution;

AND

(b) At the time of such inducement or encouragement, the defendants, Jerry Jackson, Perry Jackson and Vernon Jackson, or any of the defendants were not otherwise disposed to engage in such conduct.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

JERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-029

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

PERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-030

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

VERNON JACKSON DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Jury must reach a separate verdict on each Count described in these Instructions and a separate verdict on your determination as to whether the sentences as to term of years are to run concurrently or consecutively. Each verdict must be in writing, must be unanimous and must be signed by the Foreman of the Jury.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON — DEFENDANT

AND **Criminal Action No. 92-CR-029**

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

PERRY JACKSON — DEFENDANT

AND **Criminal Action No. 92-CR-030**

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

VERNON JACKSON — DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Verdict of the Jury must be in writing, must be unanimous and must be signed by the Foreman of the Jury.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

JERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-029

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

PERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-030

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

VERNON JACKSON DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Jury has found the defendant, Vernon Jackson, guilty of Trafficking in a Controlled Substance by selling a Schedule II Controlled Substance crack cocaine to Lawrence Acree, an undercover officer, on February 15, 1992, in Graves County, Kentucky. The Jury shall now fix his punishment at confinement in the penitentiary for not less than five years, nor more than ten years; at a fine of not less than $5,000.00 nor more than $10,000.00; or at both confinement and fine, in the Jury's discretion.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

JERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-029

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

PERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-030

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

VERNON JACKSON DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Jury has found the defendant, Vernon Jackson, guilty of Trafficking in a Controlled Substance by selling a Schedule II Controlled Substance crack cocaine to Lawrence Acree, an undercover officer, on February 18, 1992, in Graves County, Kentucky. The Jury shall now fix his punishment at confinement in the penitentiary for not less than five years, nor more than ten years; at a fine of not less than $5,000.00 nor more than $10,000.00; or at both confinement and fine, in the Jury's discretion.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON — DEFENDANT

AND Criminal Action No. 92-CR-029

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

PERRY JACKSON — DEFENDANT

AND Criminal Action No. 92-CR-030

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

VERNON JACKSON — DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Jury has found the defendant, Perry Jackson, guilty of Trafficking in a Controlled Substance by selling a Schedule II Controlled Substance crack cocaine to Lawrence Acree, an undercover officer, on February 15, 1992, in Graves County, Kentucky. The Jury shall now fix his punishment at confinement in the penitentiary for not less than five years, nor more than ten years; at a fine of not less than $5,000.00 nor more than $10,000.00; or at both confinement and fine, in the Jury's discretion.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

JERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-029

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

PERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-030

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

VERNON JACKSON DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Jury has found the defendant, Jerry Jackson, guilty of Trafficking in a Controlled Substance by selling a Schedule II Controlled Substance crack cocaine to Lawrence Acree, an undercover officer, on February 18, 1992, in Graves County, Kentucky. The Jury shall now fix his punishment at confinement in the penitentiary for not less than five years, nor more than ten years; at a fine of not less than $5,000.00 nor more than $10,000.00; or at both confinement and fine, in the Jury's discretion.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

JERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-029

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

PERRY JACKSON DEFENDANT

AND Criminal Action No. 92-CR-030

COMMONWEALTH OF KENTUCKY PLAINTIFF

VS.

VERNON JACKSON DEFENDANT

INSTRUCTION TO JURY NO._____

The Court instructs the Jury that the Jury will further determine by its verdict whether the punishment in terms of years to be served by the defendant, Vernon Jackson, under Counts _____and _____are to run concurrently (at the same time) or consecutively (one to begin after the completion of the other.)

VERDICT NO. 1

We the Jury find the defendant, Jerry Jackson, not guilty under Count in Instruction No._____.

_____
Foreman of the Jury

VERDICT NO. 2

We the Jury find the defendant, Jerry Jackson, guilty under Count in Instruction No. _____and fix his punishment for offense of Trafficking in a Controlled Substance at_____.

_____
Foreman of the Jury

VERDICT NO. 3

We the Jury find the defendant, Perry Jackson, not guilty under Count in Instruction No._____.

_____
Foreman of the Jury

VERDICT NO. 4

We the Jury find the defendant, Perry Jackson, guilty under Count in Instruction No._____and fix his punishment for offense of Trafficking in a Controlled Substance at_____.

_____
Foreman of the Jury

VERDICT NO. 5

We the Jury find the defendant, Vernon Jackson, not guilty under Count in Instruction No._____.

_____
Foreman of the Jury

VERDICT NO. 6

We the Jury find the defendant, Vernon Jackson, guilty under Count in Instruction No. _____and fix his punishment for Offense of Trafficking in a Controlled Substance on February 15, 1992, at_____.

_____
Foreman of the Jury

VERDICT NO. 7

We the Jury find the defendant, Vernon Jackson, not guilty under Count in Instruction No._____.

_____
Foreman of the Jury

VERDICT NO. 8

We the Jury find the defendant, Vernon Jackson, guilty under Count in Instruction No._____and fix his punishment for offense of Trafficking in a Controlled Substance on February 18, 1992, at_____.

_____
Foreman of the Jury

VERDICT NO. 9

We the Jury determine that the punishment as to term of years fixed for the defendant, Vernon Jackson, under Counts in Instruction Nos._____ and _____above run_____ (concurrently or consecutively).

_____

Foreman of the Jury

THE COURT: WHAT ARE YOU TALKING ABOUT?

MR. MANGRUM: Well, their recommendation. Of course, that will be at the second hearing.

THE COURT: WE HAVEN'T EVEN GOTTEN TO THAT, YET. LET'S DEAL WITH THIS PART RIGHT HERE.

MR. MANGRUM: Well, I want to make a motion now to strike the cocaine. The Court is going to overrule it probably, but I want it in the record to strike the cocaine on account of there were two purchases, one from Perry and the other one from Vernon according to the final testimony of Lawrence Acree on February the 15th, 1992 and those rocks of cocaine were intermingled and that they were sent for a test and if either one of them had cocaine and the other one didn't, that they are contaminated now to where you can't tell which one it was and it is unfair to send a rock of cocaine mixed with another rock to the Lab to get it checked to see if it is cocaine and then charge two people.

THE COURT: YOUR OBJECTION IS OVERRULED. WHAT ELSE DO YOU HAVE?

MR. MANGRUM: I will make a Motion for a Mistrial due to Kenny McCampbell, an undercover informant, a paid informant that works with the police regularly referring to the purchase of two twenty dollar rocks on February the 18th, '92 from Shirley Jackson, the sister, to Vernon, I mean, to Perry and Jerry and daughter of Vernon's. I don't think the admonition that The Court has given is going to wipe out the minds of the Jury and I can't hardly comment on it without just magnifying it and through lunch hour, after studying it carefully and I hate to ask for it, but I feel that we should have a mistrial.

THE COURT: DENIED.

MR. MANGRUM: Well, that ends all I have then.

END CHAMBER PROCEEDINGS

(In Open Court)

(Reporter's Note: The parties announce ready to proceed and roll call of the Jury is waived by the parties.)

THE COURT: LADIES AND GENTLEMEN, YOU HAVE NOW HEARD THE EVIDENCE IN THIS CASE. I WILL READ YOU THE INSTRUCTION OF LAW THAT THE COURT BELIEVES

Commonwealth of Kentucky
Court of Justice
CRIMINAL DOCKET

CIRCUIT Court
GRAVES County
DAUGHADAY Judge

3-24-92	JACKSON, VERNON	92-CR-030
Date Filed	Defendant	Case No. - Def. No.

652100	652083	1	1 of 1	3-29-31
Court No.	Judge No.	Orig-1 Reop 2	Card-Of-	Def D.O.B.

	404-38-7645	M	B	
District Case No.	Defendant Soc. Sec. No.	Sex M F	Race W B A I	BA Level

1. 35000	2.	3.	4.
Offense(s) UOR			
1.	2.	3.	4.

Cit. No. (s)

Additional offenses should be listed below *BA level in D.U.I. cases only

Additional Offenses 218A.140 (1) TRAFFICKING IN CONTROLLED SUBSTANCE (CRACK COCAINE) - 2 COUNTS

Commonwealth Attorney: Defense Attorney(s)

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03-24-92	1	IND. RET. WOA ISSUED, TO APPEAR 4-13-92 AT 9: A.M.	1
04-03-92	2	WOA RET. EXEC. ON DEFT. 3-27-92	2-3
03-31-92	3	ARRAIGNMENT ORDER FILED, DEFT. PLEA N/G P/T 4-13-92 AT 9: A.M.	4
04-27-92	4	NOTICE OF MOTION FOR BILL OF PARTICULARS FILED,	5-7
04-27-92	5	NOTICE OF MOTION TO SUPPRESS EVIDENCE FILED,	8-9
04-27-92	6	NOTICE MOTION TO QUASH INDCITMENT FILED,	10-13
05-04-92	7	SPECIAL INVES. UNIT DRUG & VICE REPORT FILED, (2-15-92)	14-15
05-04-92	8	SPECIAL INVEST. UNIT DRUG & VICE REPORT FILED,(2-18-92) TAPES (4) ENTERED AS EXHIBITS AT TRIAL	16-24
05-04-92	9	TRANSCRIPT OF KEN DARNELL FILED, (SHIRLEY JACKSON, LISA NOONAN,, VERN JACKSON, 2 TAPES; VERNON JACKSON, AND BIG BABY'S BROTHER 2-25-92)	25-36
05-04-92	10	ORDER ENTERED, FOR HEARING ON ALL PENDING MOTIONS ON 6-23-92 AT 10:30 A.M. WITH COPIES TO WEISENBERGER AND MANGRUM	37
05-07-92	11	BILL OF PARTICULARS FILED,	38-39
05-20-92	12	ORDER FOR DISCOVERY FILED, W/COPIES TO WEISENBERGER AND MANGRUM	40-41
05-20-92	13	MOTION TO CONSOLIDATE FOR TRIAL FILED, 6-23-92 AT 10:30 A.M. (92-CR-029 AND 92-CR-030)	42-43
05-20-92	14	MOTION TO CONSOLIDATE FOR TRIAL FILED, 6-23-92 AT 10:30 A.M. (92-CR-027 AND 92-CR-030)	44-45
06-23-92	15	ORDER FILED, COURT DENYING MOTION TO QUASH IND. AND MOTION TO SUPPRESS EVIDENCE, W/COPIES TO WEISENBERGER AND MANGRUM	46-48
06-23-92	16	ORDER FILED, CNT I OF INDICT. #92-CR-030 AND 92-CR-029 BE CONSOLIDATED FOR TRIAL, W/COPIES TO WEISENBERGER AND MANGRUM	49

Case No. 92-CR-030 Page No._____

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06-23-92	17	RESPONSE TO MOTION TO CONSOLIDATE FOR TRIAL FILED,	50-51
06-23-92	18	ORDER FILED, CNT II OF INDICT. 92-CR-030 AND 92-CR-027 BE CONSOLIDATED FOR TRIAL W/COPIES TO WEISENBERGER AND MANGRUM	52
08-18-92	19	ORDER RESCHEDULING TRIAL FOR OCT. 13, 1992 AT 9: A.M. FILED, W/COPIES TO WEISENBERGER AND MANGRUM	53
09-14-92	20	NOTICE OF AND MOTIONS TO QUASH INDICTMENT AND MOTION TO SUPPRESS EVIDENCE FILED,	54-59
09-21-92	21	ORDER ENTERED, COURT DENIES THE MOTION TO QUASH INDICTMENT Q/COPIES TO WEISENBERGER AND MANGRUM	60
10-01-92	22	MOTION IN LIMINE FILED,	61-62
10-13-92	23	WAIVER OF DUAL OR MULTIPLE REPRESENTATION FILED,	63-64
10-15-92	24	ORDER ENTERED, COURT GRANTING A CONT. OF THE PENDING CHARGES AGAINST THE DEFT. S AND ORDERS THAT THESE CASES BE RESCHLED, FOR TRIAL FOR 1-26-93 AND THAT THEIR BONDS BE CONT. UNTIL TRIAL DATE, W/COPIES TO WILL BELL, MANGRUM AND WEISENBERGER	65-67
12-02-92	25	ORDER ENTERED, JAMES ISBELL TO BE TRANSPORTED TO COURT ON 12-7-92 AT 9: A.M. W/COPIES TO JAILER AND SHERIFF	68
01-08-93	26	NOTICE OF AND MOTION TO COMPEL RELEASE OF LIS PENDENS FILED BY PLAINTIFF ON 4-16-92, NOTICE FOR 1-11-93 9: A.M.	69-71
01-11-93	27	ORDER ENTERED DENYING MOTION TO COMPEL THE COMMONWEALTH TO RELEASE ITS LIEN AGAINST REAL EST, OF THE DEFT. W/COPIES TO MANGRUM AND WEISENBERGER	72-73
01-29-93	28	MOTION FOR A DIRECTED VERDICT ACQUITAL FILED,	74-75
02-02-93	29	ORDER REVOKING DEFT. BOND, REMANDED TO JAILER FILED, W/ COPIES TO PROB. AND PAR., WEISENBERGER AND MANGRUM	76-77
02-02-93	30	INSTRUCTIONS TO THE JURY FILED,	78-84
02-02-93	31	INSTRUCTIONS TO THE JURY PENALTY PHASE FILED,	85-92
02-02-93	32	MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT AND MOTION FOR NEW TRIAL FILED,	93-102
02-08-93	33	TRANSPORT ORDER ENTERED, DEFT. FROM GRAVES CO. JAIL TO DR. JACKSON ON 2-10-93 AT 3:15 P.M. W/COPIES TO GRAVES CO. JAILER AND SHERIFF	103
02-16-93	34	NOTICE OF AND MOTION FOR PROBATION OR CONDITIONAL DISCHARGE FILED,	104-106
02-16-93	35	NOTICE OF AND MOTION TO SET BOND PENDING APPEAL FILED,	107-108
02-22-93	36	JUDGMENT ENTERED, DEFT. SENT 5 YEARS ON EACH CNT. TO RUN CONCURRENT FOR A TOTAL OF 10 YEARS W/COPIES TO MANGRUM, WEISENBERGER, PROB. AND PAROLE, JAILER AND SHERIFF	109-110
02-26-93	37	NOT. OF APPEAL FLD, COPY TO ATT GEN, J SCOTT & MANGRUM	111-112
02-26-93	38	NOT. OF APPEAL FLD, COPY TO ATT GEN, J SCOTT & MANGRUM	113-114

Case No. 92-CR-030 Page No._____

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03-01-93	39	DESIGNATION OF PROCEEDINGS STENOGRAPHICALLY REPORTED, TAPES AND EXHIBITS FILED, W/COPY TO TOMMIE INGLE	115
03-01-93	40	CERTIFICATE BETWEEN COUNSEL AND COURT REPORTER FOR TRANSCRIPTION FILED, W/COPY TO TOMMIE INGLE	116-117
03-05-93	41	ORDER ENTERED THAT LIEN OF COMMONWEALTH OF KY AGAINST THE PROPERTY OF DEFT., VERNON JACKSON IS A SUPERIOR LIEN TO THAT OF DEFT. S COUNSEL, W/COPIES TO MANGRUM AND WEISENBERGER	118-120
03-08-93	42	NOT. OF APPEAL FLD, COPY TO ATT GEN, J.SCOTT & MANGRUM	121-122
03-08-93	43	NOT. OF APPEAL FLD, COPY TO ATT GEN, J.SCOTT & MANGRUM	123-124
03-08-93	44	DESIGNATION OF PROCEEDINGS STENOGRAPHICALLY REPORTED, TAPES AND EXHIBITS FILED, W/COPY TO TOMMIE INGLE	125-127
03-08-93	45	CERTIFICATE BETWEEN COUNSEL AND COURT REPORTER FOR TRANSCRIPTION FILED, W/COPY TO TOMMIE INGLE	128-129
03-29-93	46	NOTICE AND MOTION FOR SUBSTITUTION OF COUNSEL AND GRANT VERNON JACKSON LEAVE TO PERFECT HIS APPEAL IN FORMA PAUPERIS FILED, HEARING SET 4-5-93 AT 9: A.M.	130-132
03-29-93	47	TRANSPORT ORDER ENTERED, DEFT. FROM KY ST REFORMITY, LAGRANGE TO GRAVES CIR. CT. ON 4-5-93 AT 9: A.M. W/COPIES TO KY CORR. CAB., KY STATE REFORITORY, P.D., WEISENBERGER AND LOUIS MANGRUM	133
03-31-93	48	NOTICE OF AND MOTION FOR SHOCK PROBATION FILED, HEARING SET 4-5-93 AT 9: A.M.	134-136
04-02-93	49	RESPONSE TO MOTION TO SUSPEND FURTHER EXEC. OF SENT. FILED	137
04-06-93	50	ORDER ENTERED, COURT APPTS. PUBLIC DEFENDER TO REPRESENT THE DEFT. ON HIS APPEAL AND SAID MOTION FOR SHOCK PROBATION IS DENIED W/COPIES TO WEISENBERGER, P.D. MANGRUM, PROB. & PAR. & MARGARET CASE	138-139
04-08-93	51	ORDER ENTERED, THAT DEFT. IS ALLOWED TO PROCEED IN FORMA PAUPERIS IN PERFECTING HIS APPEAL, W/COPIES TO MARGARET CASE, WEISENBERGER, MANGRUM & P.D.	140
04-12-93	52	TRANSCRIPT OF TRIAL PROCEEDINGS IN 5 VOLUMES FILED, WITH EXHIBITS	
04-15-93	53	CLERK'S CERT. MAILED TO MARGARET CASE, L. MANGRUM, PUBLIC DEFENDER, ATTY GENERAL AND JOHN SCOTT, CLERK COURT OF APPEALS	
05-18-93	54	ORDER ENTERED THAT MOT. FOR SHOCK PROBATION PRO SE IS DENIED W/COPIES TO WEISENBERGER, VERNON JACKSON, & PROBATION AND PAROLE	
05-17-93	55	ORDER REGARDING RECORD FILED, REQUESTING TO IMMEDIATELY TRANSMIT THE RECORD OF VERNON JACKSON	
05-19-93	56	COURT RECORD WITH TRANSCRIPTS IN (5) VOLUMES MAILED TO JOHN SCOTT, CLERK, COURT OF APPEALS	
07-14-93	57	MOTION TO SUSPEND FURTHER EXEC. OF SENTENCE FLD.	

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DATE	ITEM	PROCEEDING	PAGE
07-21-93	58	ORDER DENYING SHOCK PROBATION, COPY TO RICK WEISENBERGER, VERNON JACKSON, PROBATION & PAROLE	
07-29-93	59	ORDER FILED FROM COURT OF APPEALS W/COPIES TO P.D., WEISENBERGER, GERALD BELL & LOUIS MANGRUM	
10-27-93	60	ORDER DENYING MOTION TO DISMISS FILED,	
01-07-94	61	SUPPLEMENTAL CLERK'S CERT. MAILED TO COURT OF APPEALS WITH EXHIBITS	
09-26-94	62	LOUIS MANGRUM V COMM. OF KY - COURT OF APPEALS OPINION AND ORDER DISMISSING FLD.	
10-14-94	63	MOTION FOR DISCRETIONARY REVIEW FLD.	
01-23-95	64	NOTICE OF DISCHG. FLD.	
02-10-95	65	ORDER DENYING DISCRETIONARY REVIEW FLD BY CT. OF APPEALS	
03-10-95	66	OPINION AND ORDER DISMISSING FLD BY CT. OF APPEALS	
03-17-95	67	ORDER DENYING DISCRETIONARY REVIEW FLD BY CT OF APPEALS	
03-21-95	68	COURT RECORD RETURNED FROM COURT OF APPEALS FLD.	
03-21-95	69	OPINION AFFIRMING FROM COURT OF APPEALS FLD.	

Q. 3 Have you ever been in Vernon Jackson's home?

A. Yes, Sir.

Q. 4 Does he have a daughter?

A. Yes, Sir.

Q. 5 What is her name?

A. Shirley Todd.

Q.6 Alright. Is she here in Mayfield?

A. I don't know where she's at right now, Sir.

Q.7 Did she formerly live in Mayfield?

A. Yes, Sir.

Q.8 Did you have any relationship with her in the past?

A. Yes, Sir?

Q.9 Under what circumstances and for how long?

A. Well, I bought drugs from her on the same night.

MR. WEISENBERGER: NO, I'M TALKING ABOUT, DID YOU EVER DATE HER?

A. No, Sir.

Q.10 Did you stay with her any time?

A. Yes, Sir. She used to take care of me.

Q.11 Alright. And have you been to reunions involving the Jackson Family?

A. Yes, Sir.

Q.12 And you have been to Church with them?

A. Yes, Sir.

MR. MANGRUM: I WOULD ASK THE COURT TO ADMONISH THE JURY TO DISREGARD THAT REMARK ABOUT WHAT HE DID THAT NIGHT.

THE COURT: THE COURT WOULD ADMONISH THE JURY TO DISREGARD AND NOT PAY ANY ATTENTION TO THE TESTIMONY OF THE WITNESS ABOUT TRANSACTIONS WITH SHIRLEY TODD.

MR. WEISENBERGER: Yes, Sir.

Q.13 And you have known the Jackson Family for how long?

A. Years - over ten years.

MR. WEISENBERGER: OKAY. THAT'S ALL.

REDIRECT EXAMINATION BY MR. MANGRUM:

Q.1 But they were just associates.

A. Yes, Sir.

Q.2 Did you ever eat a meal in their home?

A. Yes

Q.3 Did you ever drink coffee?

A. Yes, Sir...not in none of their homes. I eat in Jerry's home.

Q.4 But you never ate at Vernon's home?

A. No, Sir

CROSS EXAMINATION BY MR. WEISENBERGER:

Q.1 Did you see him on the Wishy-Washy parking lot that night?

A. I haven't seen nobody. I don't....I wasn't there myself so I couldn't have seen nobody.

MR. WEISENBERGER: THAT'S ALL.

THE COURT: YOU MAY STAND DOWN. CALL YOUR NEXT WITNESS.

(Defense Counsel recalls Defendant Jerry Jackson who was reminded by The Court that he was still under oath from his previous testimony.)

THE COURT: HAVE A SEAT, MR. JACKSON, AND STATE YOUR NAME.

WITNESS: Jerry Jackson

DIRECT EXAMINATION BY MR. MANGRUM:

Q1. Mr. Jackson, do you know Ray Lawrence?

A. Yes.

Q.2 Did you tell me yesterday when I issued a subpoena for him that he worked with Scarbrough Concrete?

A. Yes. He works with Scarbrough. They do concrete work.

Q.3 Did I tell you to try to find him?

A. Yes

Q.4 Have you been doing that?

A. Yes. I went by his home last night and he wasn't at home?

Q.5 You couldn't find him?

A. No, Sir. He lives over on North 5th, right down from those apartments - Polynesian Apartments - right across the street in that brick apartment.

MR. MANGRUM: I HAVE NO FURTHER QUESTIONS.

CROSS EXAMINATION BY MR. WEISENBERGER:

Q1. Was that in fact his residence that you went to?

A. Yes.

Q.2 Did someone answer the door?

A. No one was home.

Q.3 Did you leave a note on the door?

A. No, I didn't leave no note on the door.

MR. MANGRUM: Well, I'll call the uh, uh...can we get the lady from the Sheriff's Office.

THE COURT: MR. MANGRUM, APPROACH THE BENCH.

(At The Bench)

THE COURT: I AM NOT GOING TO PUT UP WITH THIS ANY LONGER. IF YOU HAVE WITNESSES TO CALL FOR THE DEFENSE, CALL THEM. YOU ARE NOT GOING OUT FISHING AROUND FOR WITNESSES.

MR. MANGRUM: Well, we couldn't find them.

THE COURT: THAT'S TOO BAD, MR. MANGRUM. YOUR CLIENT SAID HE WASN'T THERE TO BEGIN WITH.

MR. MANGRUM: Well, I think I should be allowed to prove that they could have found out.

THE COURT: DO YOU HAVE ANOTHER WITNESS, MR. MANGRUM.

MR. MANGRUM: Well...

THE COURT: THE DEFENSE RESTS. I AM GOING TO LET THE JURY GO AND COME BACK FOR INSTRUCTIONS AT ONE O'CLOCK. I WANT TO MEET WITH THE ATTORNEYS IN CHAMBERS.

MR. MANGRUM: SHOW MY OBJECTION.

END BENCH PROCEEDINGS.

(In Open Court)

(Reporter's Note: Jury is allowed to recess until one o'clock, under the usual admonition of the Court.)

THE COURT: I WOULD LIKE TO SEE THE ATTORNEYS AND THE COURT REPORTER IN CHAMBERS.

(In Chambers)

THE COURT: MR. MANGRUM, THIS IS IN CHAMBERS AND I WILL ADVISE YOU THAT YOUR CONDUCT IN THIS TRIAL IS DESPICABLE. IT VIOLATES THE RULES OF ETHICS IN REPRESENTING YOUR CLIENTS AND YOU ARE NOT TO DISPLAY THIS KIND OF CONDUCT BEFORE THIS COURT.

MR. MANGRUM: Well, Your Honor, I don't agree.

THE COURT: YOU DON'T EVEN KNOW WHAT I'M TALKING ABOUT AND THAT WORRIES ME MORE. YOU CAN'T KEEP A JURY IN A COURTROOM WHILE YOU WANDER AROUND. YOU DON'T QUESTION THE SAME WITNESS THREE, FOUR, OR FIVE TIMES AND ASK THE SAME QUESTIONS OVER AND OVER AGAIN.

MR. MANGRUM: Well, I've got a right to cross examine them.

THE COURT: THAT IS NOT CROSS EXAMINATION. THAT IS HARASSMENT

MR. MANGRUM: Your Honor, I didn't hear the name Ray Lawrence until yesterday.

THE COURT: YOUR CLIENT TESTIFIED HE WASN'T EVEN THERE. I AM NOT GOING TO ALLOW YOU TO POSTPONE THIS TRIAL, DURING THE COURSE OF

THE TRIAL, WHILE YOU GO OUT AND SCOUT FOR WITNESSES.

MR. MANGRUM: Well, Your Honor, I subpoenaed him as soon as I knew about him.

THE COURT: THAT IS TOO BAD.

MR. MANGRUM: I put it in the hands of the Sheriff. That's all I can do.

THE COURT: THEN, YOU SHOULD HAVE SAID THAT YOU DIDN'T HAVE ANY FURTHER WITNESSES RATHER THAN GO THROUGH THE CHARADE THAT YOU DID IN THE COURTROOM IN FRONT OF THE JURY.

MR. MANGRUM: Well, I have other witnesses as far as... I was asking The Court to let me have time to try to get them.

THE COURT: AND THAT WAS DENIED.

MR. MANGRUM: Lonzo Griffith and also Lonzo Griffith could have testified to the fact that Perry is out of Town.

THE COURT; WELL, WHY DIDN'T YOU SUBPOENA HIM AND HAVE HIM HERE, MR. MANGRUM?

MR. MANGRUM: Well, I...

THE COURT: HE IS YOUR WITNESS. YOU SHOULD HAVE SUBPOENAED HIM AND HAD HIM HERE.

MR. MANGRUM: Yeah, that part, I don't expect The Court to wait. He wasn't under subpoena and I don't expect The Court there to wait. I didn't subpoena him.

THE COURT: MR. WEISENBERGER, THE COMMONWEALTH HAS NO REBUTTAL, IS THAT CORRECT?

MR. WEISENBERGER: No, Sir.

THE COURT: I'M SHOWING YOU NOW THE INSTRUCTIONS OF LAW THAT THE COURT THINKS SHOULD BE READ TO THE JURY.

MR. MANGRUM: Well, let me make this Motion at this time. I'm going to make a Motion that all the tapes be quashed as evidence and that the...on the basis in addition to what I have moved, on the basis they they are as testimony here shows, incomplete and not reliable as to what really did occur and that some of them weren't admitted were so bad that they were denied admission and that the testimony in regard to the tapes was that the officer couldn't even find anything on that one tape relating to the February 18th incident.

THE COURT: MR. MANGRUM, THAT TAPE WAS NEVER INTRODUCED BY THE COMMONWEALTH IN THE EVIDENCE.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

Criminal Action No. 92-CR-027

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON — DEFENDANT

AND **Criminal Action No. 92-CR-029**

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

PERRY JACKSON — DEFENDANT

AND **Criminal Action No. 92-CR-030**

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

VERNON JACKSON — DEFENDANT

MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT AND MOTION FOR NEW TRIAL

Now come the defendants, Jerry Jackson, Perry Jackson, and Vernon Jackson, by their attorney, Louis V, Mangrum, and state as follows:

The defendants, Jerry Jackson, Perry Jackson and Vernon Jackson, state that as shown by their Motion For A Directed Verdict Of Acquittal presented at the conclusion of the Commonwealth Of Kentucky's evidence and renewed at the conclusion of all the evidence in the case the chain of custody of the crack cocaine is such that it is shown the two separate purchases on February 15, 1992, were mixed by Captain Gordon and mailed to Officer Henson to be tested with the name of Perry Jackson enclosed in the sealed bag by certified mail and the crack cocaine purchased on February 18, 1992, was sealed in a plastic bag with the names, Perry Jackson, Jerry Jackson and Vernon Jackson and mailed to Officer Henson for testing by certified mail; that Officer Henson testified the bags received by him by registered mail on March 11, 1992, contained crack cocaine but failed to determine what other substances they contained when there was only .101 grams difference in the weight of the containers with one containing 35 grams and the other 36 grams when according to the purchases of same the one dated February 18, 1992, would have contained 20% more crack cocaine that the two purchased on February 15, 1992; that there is not any evidence in the record to support a verdict of guilty beyond a reasonable doubt as the evidence of the defendants is to the effect they could not recall their whereabouts on the crucial dates which occurred some six weeks prior to their arrest but did know the events did not occur to their knowledge with all the Officers who testified in regard to the happening of the events contradicted their testimony on major events such as could they hear the tapes of the purchases in the car in which they were riding and to following the defendant, Perry Jackson, with Officer Acree testifying he and the undercover informer followed Perry Jackson from the time they stopped him until the purchase on February 15, 1992 was made and Officer Lear testified he, Captain Gorden, and Officer Darnell were following Perry Jackson and that they came by the Wishy Washy

Laundry going in the opposite direction with him first recognizing both Vernon Jackson on the steps at the house across the street and Perry Jackson sitting in a parked car on the parking lot of the Wishy Washy Laundry and later testified he did not see any one else but did go to Gibson's parking lot and was in a position to see the other back up unit which was parked on the street near the Wishy Washy Laundry and Captain Gordon warn the unit it was too close; Officer Darnell testified he was driving the vehicle and saw Vernon Jackson in the yard of the house across the street but could only see one thing at a time; Captain Gordon admitted he did not see anything in regard to the Wishy Washy Laundry as they passed it; all officers when asked it they had told Hon. Richard Weisenberger that they or anyone was sitting in a Van and could see the purchases made all said they did not; the only evidence in regard to who was there depends on the testimony of James Isabell a paid informer and the memory of Officer Lawrence Acree who followed Perry Jackson for a long distance of several blocks, waited for him to drop off a friend when it was dark and was only involved approximately fifteen minutes who wrote a synopsis that night but whose memory at this trial was such as to override it in that he gave Perry Jackson the money for the first $20.00 rock purchased and Vernon Jackson $20.00 for the second $20.00 rock purchased instead of giving Vernon Jackson all the money for both purchases; that the testimony of James Isabell like the testimony of the officers is without probative value to support a verdict of guilty beyond a reasonable doubt.

2.

The defendants further state the Court committed prejudicial error against them in overruling their motion for a mistrial on the basis the witness, a paid informer Kenny McCampbell, after being admonished to only testify as to the event on February 18, 1992, that involved the defendants, Jerry Jackson and Vernon Jackson, testified that he on said date just prior to

the defendants' case purchased two $20.00 rocks of crack cocaine from Shirley Jackson, sister to Jerry Jackson and Perry Jackson and daughter of Vernon Jackson, at the same residence, when over the objection of the defendants to the consolidation of these cases on the basis all defendants were immediate family and made it look bad these cases were consolidated by the Court; that even though this Court did admonish the Jury to disregard the remark they feel a mistrial was called for and did so move in chambers.

3.

The defendants further state the Court committed prejudicial error against the defendants in failing to quash the evidence which was obtained in violation of their rights under the 4th, 5th, and 6th amendments to the Constitution of the United States Of America, Articles 10 and 11 of the constitution of The Commonwealth of Kentucky, Onnibus Crime Control Act and Safe Streets Act of 1968, 18 U.S.C. Article 2510 through Article 2520 and KRS 526.010 and KRS 526.020 in that after the plaintiff had evidence constituting probable cause as sworn to by Officer Darnell before the Grand Jury without attempting to obtain an arrest warrant by the District Court and proceeding in accordance therewith he elected to proceed by the use of an informer and undercover Officer and at the end of the avowel, taken in chambers, after the Court closed the defendants case over the objection of their counsel as counsel had other witness he would like to call one of which was Ray Lawrence, who was subpoenaed the day before as soon as his name was given as being present at the time of purchase on February 15, 1992, wherein it showed he did not open a file prior to February 15, 1992, and did not as testified before the Grand Jury have a file containing probable cause against the defendants but elected to proceed to look for Jerry Jackson on that date without going before the District Court for an arrest warrant when he obtained probable cause, if ever, but proceeded with other Officers to utilize a paid informer and an

undercover officer, whereby they stopped the defendant, Perry Jackson, and followed him until he could take a passenger home and park on the Wishy Washy Laundry and make two purchases of $20.00 rocks of crack cocaine which constituted an illegal stop without probable cause to avoid his testimony from being stricken as counsel for the defendants so moved if he had not been furnished a copy of any written statements made by Officer Darnell prior to his giving testimony pursuant to RCr 7.26; that Captain Gordon at said avowel testified he had known for six months prior to February 15, 1992, that Jerry Jackson was a suspect, but had not received any information that he considered worth recording; there was testimony that the paid informer, James Isabell, had furnished them information concerning the defendants of the nature which would have constituted sufficient evidence for the District Court to have issued an arrest warrant in these cases which would have required the plaintiff to have advised them of their constitutional rights which included their right to counsel.

4.

The defendants further state that the Court failed to properly instruct the Jury on the whole law of the case which was prejudicial to the defendants in that it failed to follow the form of the Instructions To Jury tendered by the defendants wherein a separate instruction of the Jury was given as to each Count charged which included four Counts one each against the defendants, Jerry Jackson and Perry Jackson and two Counts against the defendant Vernon Jackson; that even though the Jury made inquiry in regard to same and the Court further explained them they are ambiguous and were objected to by the defendants on that basis prior to being given; that where the instruction is generally related to factors as to all defendants such as presumption of innocence and proof to be beyond a reasonable doubt they can relate to all defendants, but where there require a finding of fact they cannot relate to

more than one defendant in multiple defendant trials as all the evidence does not relate to all defendants and must be determined as to each defendant; that the Court failed to instruct as to entrapment over the objection of the defendants when all the evidence in regard thereto presented by the plaintiff is to the effect the plaintiff used the informer for the sole purpose of getting the defendants to sell to the undercover Officer, Lawrence Acree, as they would not have made the sales otherwise, that the defendants had never been convicted for the use of or sale of crack cocaine and of course the purchase was made for the sole purpose of obtaining evidence against them in these cases in violation of KRS 505.010; that at the time of arrest of the defendants there was not any crack cocaine found on any of them and their residences were not searched by the plaintiff when it could have obtained a search warrant for that purpose which was in substance depriving the defendants of relevant evidence; that even though the defendant, Vernon Jackson, did not know who arrested him, his arrest was shown on Channel Six of Paducah Television station and was videoed taped by some one at the time when Captain Gordon made it appear it was maybe possible but not probable in these cases.

5.

The defendants further state the Court committed prejudicial error against the defendants in not excluding the tapes as evidence as they were incomplete and their chain of custody had not been sufficient to justify their admission as evidence in that they furnished the defendants some as copies that were not pertaining to the cases involved and some that were related to the cases the were inaudible and none of which contained the names of any of the defendants; that the Court likewise committed prejudicial error against the defendants by letting the witness testify in regard to what occurred during the period of time the tapes were being made in that the tapes constitute the best evidence in regard to same and many of the witnesses testified to the effect they were coming through loud

and clear even though there was testimony by some Officers to the contrary as evidenced by the tapes themselves.

6.

The defendants further state that the Court committed prejudicial error against the defendants in commenting on the and accusing the defendants counsel he was intentionally delaying the progress of the trial.

7.

The defendants further state the Court committed prejudicial error against the defendants when it overruled the objection to the Commonwealth Attorney's remarks that were not related to the evidence to the effect the procedure followed in this case was appropriate in all respects when he knew he had by motion in liminie requested the Court to not let the defendants show that the procedure was inappropriate, and the statement that when you have the facts on your side you argue the facts and when you have the law on your side you argue the law and if you have neither on your side you argue like the devil which was inappropriate and erroneous as not applicable to a Jury trial as the facts have not been determined following closing of the defendants where their counsel argued approximately an hour and was informed he had only two minutes more.

8.

That this Court committed prejudicial error against the defendants in not granting a new trial if they were able to obtain the testimony of Ray Lawrence because it constitutes newly discovered evidence which they could not have obtained by reasonable diligence and produced it at the trial.

The defendants further state that the Court committed prejudicial error against the defendants in not sustaining their objection to errors of law at the trial of this action; that if no single error is sufficiently prejudicial to the defendants to require a new trial the cumulative effect of so many errors is such as to require a new trial in this case.

WHEREFORE, the defendants demand:

1. That this Court enter judgment of acquittal as to the defendant, Jerry Jackson, irrespective of the Verdict of Guilty by the Jury.

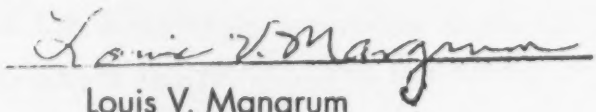
2. That this Court enter judgment of acquittal as to the defendant, Perry Jackson, irrespective of the Verdict of Guilty of the Jury.

3. That this Court enter judgment of acquittal as to the defendant, Vernon Jackson, of the charge on February 15, 1992, irrespective of the Verdict of the Jury.

4. That this Court enter judgment of acquittal as to the defendant, Vernon, Jackson, of the charge of February 18, 1992, irrespective of the Verdict of the Jury.

5. That this Court grant the defendants a new trial.

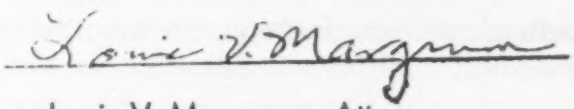
6. Any and all relief to which they are entitled.



Louis V. Mangrum
Attorney for defendants
Mangrum Building
427 East Broadway
Mayfield, Kentucky 42066-2489
Tel. 502-247-6702

NOTICE

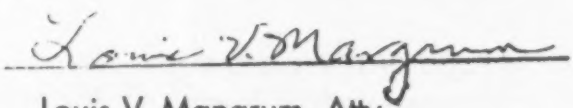
The defendants hereby give the plaintiff, Commonwealth of Kentucky, notice they will by counsel on February 22, 1993, at 9:00 A.M. O'clock, or as soon thereafter as they may be heard appear before the Hon. John T. Daughaday, Judge of Graves Circuit Court, or anyone sitting in his place and stead in the Circuit Court Room in the Courthouse in Mayfield, Kentucky and move for Judgment Notwithstanding the Verdict and Motion For New Trial, at which time and place you may appear if you see fit.



Louis V. Mangrum, Atty.

CERTIFICATE

I, Louis V. Mangrum, attorney for the defendants, hereby certify that I have served a copy of Notice and Motion For Judgment Notwithstanding Verdict and Motion for new Trial on the plaintiff, Commonwealth of Kentucky, by handing a copy to Hon, Richard Weisenberger, Commonwealth Attorney, and by mailing a copy of same to Hon. Chris Gorman, Attorney General of Kentucky, at Capitol Building, Frankfort, Kentucky 40601, with postage prepaid this the 1st. day of February, 1993.



Louis V. Mangrum, Atty.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT
Indictment No. 92-CR-027
Indictment No. 92-CR-029
Indictment No. 92-CR-030

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON
PERRY JACKSON
VERNON JACKSON — DEFENDANTS

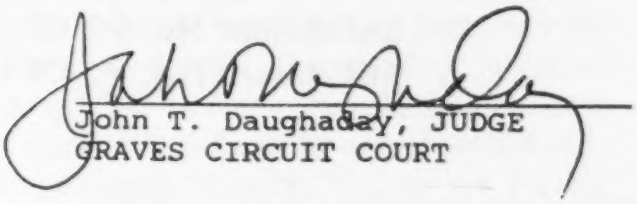
ORDER

By previous Orders of the Court, the above indictments against the above Defendants came on for trial before a jury of the Graves Circuit Court beginning Tuesday, January 26, 1993, and ending Friday, January 29, 1993. The jury, having returned a verdict finding Jerry Jackson and Perry Jackson guilty of one Count each of Trafficking in Cocaine,finding Vernon Jackson guilty of two Counts of Trafficking in Cocaine , and the Court being sufficiently advised, now **REVOKES** the Defendants' bonds and **ORDERS** them remanded to the custody of the Graves County Jailer pending formal sentencing on Monday, February 22, 1993, at 9:00 a.m.

It is further **ORDERED** that Probation and Parole shall prepare a Presentence Investigation report on each Defendant.

2-2-93
DATE
GRAVES CIRCUIT CT.
Judge

WITNESS MY HAND this 29th day of January, 1993.



John T. Daughaday, JUDGE
GRAVES CIRCUIT COURT

COPIES TO:

Hon. Richard Weisenberger
Hon. Louis Mangrum
Probation and Parole
Graves County Jailer

Commonwealth Of Kentucky
Court Of Appeals

NO. 93-CA-533-MR

PERRY JACKSON — APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
INDICTMENT NO. 92-CR-29

COMMONWEALTH OF KENTUCKY — APPELLEE

AND NO. 93-CA-534-MR

VERNON JACKSON — APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
INDICTMENT NO. 92-CR-30

COMMONWEALTH OF KENTUCKY — APPELLEE

AND

NO. 93-CA-535-MR

LOUIS V. MANGRUM — APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
INDICTMENT NO. 92-CR-30

COMMONWEALTH OF KENTUCKY — APPELLEE

AND NO. 93-CA-536-MR

JERRY JACKSON — APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
INDICTMENT NO. 92-CR-27

COMMONWEALTH OF KENTUCKY — APPELLEE

AND

NO. 93-CA-585-MR

LOUIS V. MANGRUM — APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
INDICTMENT NO. 92-CR-30

COMMONWEALTH OF KENTUCKY — APPELLEE

AND NO. 93-CA-586-MR

VERNON JACKSON — APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
INDICTMENT NO. 92-CR-30

COMMONWEALTH OF KENTUCKY — APPELLEE

AND

NO. 93-CA-587-MR

PERRY JACKSON — APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
INDICTMENT NO. 92-CR-29

COMMONWEALTH OF KENTUCKY — APPELLEE

AND NO. 93-CA-588-MR

JERRY JACKSON — APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
INDICTMENT NO. 92-CR-27

COMMONWEALTH OF KENTUCKY — APPELLEE

FILED
DATE 7-29-93
JOE STEWART, CLERK
GRAVES COUNTY CIRCUIT COURT
BY [illegible] D.C.

ORDER

BEFORE: LESTER, CHIEF JUDGE; DYCHE AND HOWERTON, JUDGES.

BACKGROUND:

On January 22, 1993, appellants Vernon Jackson, Perry Jackson, and Jerry Jackson (hereinafter Jacksons) were convicted by a jury of drug related charges in the Graves Circuit Court. Appellant Louis Mangrum (hereinafter Mangrum) acted as trial counsel. On February 22, 1993, prior to sentencing, Mangrum moved the Graves Circuit Court to order the lis pendens held by the Commonwealth on the Jacksons' property and determined that his statutory attorney's lien was superior to the Commonwealth's statutory forfeiture lien. After hearing arguments, the Graves Circuit Court orally denied the motion to release the lis pendens and determined that the Commonwealth's forfeiture lien was superior to Mangrum's attorney lien. The Graves Circuit Court then entered its judgment and sentence on plea of not guilty for the Jacksons.

On February 26, 1993, Mangrum filed his notice of appeal regarding the lien issue (93-CA-535-MR). Additionally, Mangrum filed notices of appeal for the Jacksons (93-CA-534-MR, 93-CA-536-MR, 93-CA-533-MR). Thereafter, the Graves Circuit Court entered a written order dated March 4, 1993, confirming the oral order made on February 22, 1993. Mangrum filed a second notice of appeal regarding the lien issue on March 8, 1993 (93-CA-585-MR). Appeals were also filed for the Jacksons (93-CA-586-MR, 93-CA-588-MR, 93-CA-587-MR). At this point, a total of eight appeals were filed.

ORDERS:

The Court hereby ORDERS that all appeals taken from the Graves Circuit Court's February 22, 1993 order be DISMISSED as having been prematurely taken from oral orders of the Circuit Court (93-CA-533-MR, 93-CA-534-MR, 93-CA-535-MR, and 93-CA-536-MR). All pending motions in those four appeals are hereby DENIED AS MOOT.

Having considered the motion to join all appeals for the purpose of perfecting, filed March 12, 1993, and being otherwise sufficiently advised, the Court hereby ORDERS that the motion be, and it is hereby, GRANTED to the following extent. Appeals involving the criminal convictions of the Jacksons, 93-CA-586, 587, and 588-MR, are hereby ORDERED CONSOLIDATED. Appellant Mangrum's appeal, 93-CA-585-MR, shall remain separate.

The record on appeal having already been filed in this Court, further, procedural steps shall run from the date of entry of this order.

ORDERS RELATING TO MANGRUM:

Having considered the motion to dismiss Louis V. Mangrum as appellant, filed March 9, 1993, to which a response has been filed, and being otherwise sufficiently advised, the Court ORDERS that the motion be, and it is hereby, DENIED. See Franklin County Fiscal Court v. Stewart, Ky. App., 757 S.W. 2d 194 (1988).

Having considered the appellant joint motion to substitute counsel, to which no response has been filed, and being otherwise sufficiently advised, the Court hereby ORDERS that the motion be, and it is hereby, GRANTED. Attorney Gerald Bell is hereby SUBSTITUTED for Louis V. Mangrum as counsel for appellant.

ORDERS RELATING TO THE JACKSONS:

Having considered the motions for the Court to protect appellants' interests until the substitution of attorneys is made herein, and being otherwise sufficiently advised, the Court ORDERS that the motion be, and it is hereby, DENIED. The Court notes that the Jacksons have been granted in forma pauperis standing in the Graves Circuit Court and the Department of Public Advocacy was appointed to represent the Jacksons on appeal April 6, 1993. The Clerk of this Court is hereby ORDERED to enter the Department of Public Advocacy as attorney for appellants (93-CA-586-MR, 93-CA-588-MR, 93-CA-587-MR).

Having considered the motions to "effect the record herein the substitution of counsel for the appellant(s)" filed under 93-CA-586, 587, and 588-MR, and being otherwise sufficiently advised, the Court ORDERS that the motions be, and they are hereby, DENIED AS MOOT.

Having considered the motion for extension of time to file designation of proceedings stenographically reported, and leave to perfect appeal as a poor person, and being otherwise sufficiently advised, the Court hereby ORDERS that the motion be, and it is hereby, DENIED AS MOOT. These matters have previously been addressed by the Graves Circuit Court on April 6, 1993.

ENTERED: JULY 26, 1993

Charles B. Lester

CHIEF JUDGE, COURT OF APPEALS

PADUCAH POLICE DEPARTMENT **MEMBER OF W.A.N.T.**

SPECIAL INVESTIGATIONS UNIT
DRUG AND VICE ENFORCEMENT

COVER REVIEW OF SYNOPSIS

TOTAL OF 2 PAGES *(Counting this page)* CASE# 92-S0032

DATE/TIME PERIOD: 02-15-92 TIME: Approx. 9:50 p.m.

SUSPECT (S) Vernon Jackson
(Include)
(address and)
(statistics)

TYPE OF INVESTIGATION Trafficking in Schedule II Narcotic (Crack Cocaine)

LOCATION(s) OF INCIDENT Pryor Street
Mayfield, Kentucky

INVESTIGATORS INVOLVED Mayfield P.D. Sgt. Lear, Graves Co. Deputy Darnell, Capt. Gordon, SIO Petterson, SIO Miller, SIO Acree

REPORT WRITER SIO Lawrence Acree Date

REPORT NUMBER FOR THIS INVESTIGATION

NUMBER OF REPORTS BY THIS WRITER

SYNOPSIS OF INVESTIGATION

On 02-15-92, at approximately 6:30 p.m., Capt. Gordon, Sgt. Lear, Deputy Darnell, SIO Petterson, SIO Miller, and myself, SIO Lawrence Acree, met with a Cooperating Witness "CW" to set up an undercover cocaine buy, to get the equipment set up, and to put on transmitters. The " CW" was searched by Capt. Gordon.

At approximately 9:50 p.m. the "CW" and I stopped a subject in a brown 2dr. '74 Oldsmobile who we thought was Big Baby Jackson. The subject advised us that he was Big Baby's brother and that Big Baby was at their father Vernon Jackson's house by the projects. The subject asked what we were looking for and the "CW" told him we wanted a 1/4 gram of cocaine. The subject told us to follow him, but he had to drop off his passenger first.

After the subject dropped off his passenger on 1st St. we followed him into an area known as The Bottom, turning onto Pryor St. and into the parking lot of the Wishy Washy Laundry. The "CW" and I got out of the undercover vehicle and I got into the brown Olds with Big Baby's brother. A B/M, identified as Vernon Jackson, came from a residence across the street and approached the vehicle where the brother and I were sitting. Vern asked his son what I wanted. The son said I wanted a $20.00 piece. Vern handed his son a piece of crack as I was getting out of the vehicle. I walked around to the driver's side of the vehicle where Vern was and Vern's son handed me the 1/4 gram of crack cocaine. I paid Vern $20.00. the "CW" who had been talking to an unknown B/M, came to the driver's side of the vehicle and told me that he would pawn me his V.C.R. if I would buy another piece of crack from Vern. I asked Vern to sell me another piece of crack and Vern opened a pill bottle he was holding, took out a piece of crack and handed it to me. I asked Vern if the crack was going to be "fire" (meaning good) and Vern said guaranteed. Vern said that was what he kept in his pocket. I told the "CW" that Vern might take his V.C.R. in pawn but Vern said no, that nothing was worth anything to him but money that night. I gave Vern another $20.00 bill than asked Vern where he would be later because the "CW" and I might come back. Vern told me to park where we were and he would be watching and would come over to us. Vern said that if he wasn't there he would be at his home. Vern's son, who is also Big Baby's brother, pointed at the "CW" and told me that the "CW" knew where Vern lived.

The "CW" and I left at approximately 10:05 p.m. and met with Capt. Gordon, Sgt. Lear, Deputy Darnell, and SIOs Petterson and Miller at approximately 10:10 p.m. Once there I turned the crack and the remainder of the buy money over to Capt. Gordon.

END OF STATEMENT
SIO Lawrence Acree

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON (Indictment No. 92-CR-027)

PERRY JACKSON (Indictment No. 92-CR-029)

VERNON JACKSON (Indictment No. 92-CR-030)

DEFENDANTS

ORDER

On January 29, 1993, a jury of the Graves Circuit Court returned its verdict finding the Defendant, Jerry Jackson, guilty of 1 Count of Trafficking in Cocaine, finding the Defendant, Perry Jackson, guilty of 1 Count of Trafficking in Cocaine, and finding the Defendant, Vernon Jackson, guilty of 2 Counts of Trafficking in Cocaine. All three cases had been joined by Order of the Court for purposes of trial. The jury, at the conclusion of the penalty phase, recommended a ten (10) year prison sentence for each of the three Defendants.

On February 22, 1993, this Court entered its Judgment and Sentence for the above Defendants sentencing each of them to a term of incarceration of ten years in the penitentiary in accordance with the recommendations of the jury. Counsel for the Defendants made a Motion for probation, and probation was denied by the Court for the reasons set forth in the Judgment. On the same date as sentencing, defense counsel

motioned the Court for a new trial and/or Judgment notwithstanding the verdict. The Court, after hearing arguments of counsel, ruled from the bench that both Motions were denied.

Counsel for the Defendants had previously motioned this Court to establish the priority of liens regarding the real estate owned by the Defendant, Vernon Jackson. The Commonwealth had caused a lien to be filed against the Defendant's property pursuant to KRS 218A.405 through 460, and this lien was filed prior to defense counsel's lien for attorney's fees pursuant to KRS 376.460. The Court heard arguments regarding defense counsel's Motion to establish priority of liens and had delayed ruling on that Motion until the conclusion of the Defendants' trial.

The Defendants now have been sentenced by the Court pursuant to the verdict of the jury, and the Court being sufficiently advised, now finds that the lien of the Commonwealth of Kentucky against the property of the Defendant, Vernon Jackson, is a superior lien to that of Defendant's counsel established pursuant to KRS 376.460.

All of these Motions, by counsel for the Defendants, were presented and argued before the Court on the same day of sentencing, and all rulings were announced by the Court from the bench as indicated by this Order.

WITNESS MY HAND this 4th day of March, 1993.

John T. Daughaday, JUDGE
GRAVES CIRCUIT COURT

COPIES TO:

Hon. Richard Weisenberger
Hon. Louis Mangrum

MAR 0 7 1993

CLERK
BY: D.C.

III. QUESTIONS OF LAW

The only question of law in this case are whether Movant's statutory attorney's lien created pursuant to KRS 376.360 is superior to Respondent's statutory forfeiture lien created pursuant to KRS 218A. 450; and whether Kentucky's Forfeited Property statutes, KRS 218A.405 to 218A.460 are unconstitutional under Section 11 of the Kentucky Constitution and the Sixth Amendment to the Constitution of the United States as denying criminal defendants the right to counsel of their choice.

IV. REASONS WARRANTING REVIEW

The Court of Appeals erred in concluding that Movant's Appeal is not ripe for adjudication and by dismissing his Appeal. The facts of this case are clear and allow this Court an opportunity to establish a precedent with regard to the finality if trial court decisions and appellate procedure as well as an opportunity to address substantive questions pertaining to the forfeited property and attorney lien statutes.

I.

THE COURT BELOW ERRED TO MOVANT'S SUBSTANTIAL PREJUDICE AND DENIED MOVANTS DUE PROCESS OF LAW WHEN IT, OVER DEFENSE OBJECTION, GRANTED THE RESPONDENT'S REQUEST TO CONSOLIDATE INDICTMENTS NO. 92-CR-030, NO. 92-CR-029, AND NO. 92-CR-027 INTO A SINGLE TRIAL.

II.

THE COURT BELOW ERRED TO MOVANTS' SUBSTANTIAL PREJUDICE AND DEPRIVED MOVANTS OF DUE PROCESS OF LAW BY REFUSING OVER THE MOVANTS' OBJECTION TO INSTRUCT THE JURY SEPARATELY AS TO EACH DEFENDANT.

III.

THE RESPONDENT VIOLATED MOVANTS' RIGHTS TO A FAIR TRIAL ON THE CHARGED OFFENSES AND DENIED MOVANTS DUE PROCESS OF LAW BY REPEATEDLY INTRODUCING INADMISSABLE TESTIMONY WHICH CONSTITUTED UNCHARGED CRIMINAL ACTIVITY, BAD CHARACTER EVIDENCE AND IMPROPER OPINION TESTIMONY DESIGNED TO UNFAIRLY BOLSTER THE RESPONDENT'S CASE.

A. APPELLANT IS A NECESSARY PARTY TO THIS APPEAL.

B. APPELLANT'S STATUTORY ATTORNEY LIEN CREATED PURSUANT TO KRS 376.360 IS SUPERIOR TO APPELLEE'S STATUTORY FORFEITURE LIEN CREATED PURSUANT TO KRS 218A.450.

C. KENTUCKY'S FORFEITED PROPERTY STATUTES, KRS 218A. 405 TO 218A. 460 ARE UNCONSTITUTIONAL UNDER ARTICLE 11 OF THE KENTUCKY CONSTITUTION AND THE SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AS DENYING CRIMINAL DEFENDANTS THE RIGHT TO COUNSEL OF THEIR CHOICE.

I. THE COURT BELOW ERRED TO APPELLANTS' SUBSTANTIAL PREJUDICE AND DENIED APPELLANTS DUE PROCESS OF LAW WHEN IT, OVER DEFENSE OBJECTION, GRANTED THE PROSECUTION'S REQUEST TO CONSOLIDATE INDICTMENTS NO. 92-CR-030, NO. 92-CR-029, AND NO, 92-CR-027 INTO A SINGLE TRIAL

II. THE COURT BELOW ERRED TO APPELLANTS' SUBSTANTIAL PREJUDICE AND DEPRIVED APPELLANTS OF DUE PROCESS OF LAW BY REFUSING OVER THE APPELLANTS' OBJECTION TO INSTRUCT THE JURY SEPARATELY AS TO EACH DEFENDANT.

III. THE PROSECUTOR VIOLATED APPELLANTS' RIGHTS TO A FAIR TRIAL ON THE CHARGED OFFENSES AND DENIED APPELLANTS DUE PROCESS OF LAW BY REPEATEDLY INTRODUCING INADMISSIBLE TESTIMONY WHICH CONSTITUTED UNCHARGED CRIMINAL ACTIVITY, BAD CHARACTER EVIDENCE AND IMPROPER OPINION TESTIMONY DESIGNED TO UNFAIRLY BOLSTER THE COMMONWEALTH'S CASE.

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT
Indictment No. 92-CR-027
Indictment No. 92-CR-029
Indictment No. 92-CR-030

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON
PERRY JACKSON
VERNON JACKSON — DEFENDANTS

INSTRUCTIONS TO THE JURY

INSTRUCTION NO. 1

Trafficking in Cocaine, a Schedule II Controlled Substance

You will find the Defendants, Vernon Jackson and Perry Jackson, or either of them, guilty under this Instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) that in this county on or about February 15, 1992, and before the finding of the indictment herein, Vernon Jackson and Perry Jackson, or either of them, sold or delivered a quantity of cocaine, a schedule II controlled substance, to an undercover policeman;

(b) that Vernon Jackson and Perry Jackson, or either of them, knew the substance being sold or delivered was cocaine;

AND

(c) that Vernon Jackson and Perry Jackson, or either of them, had the cocaine in their possession with the intent of selling it to another person.

If you find the Defendants, Vernon Jackson and Perry Jackson, or either of them, guilty under this Instruction, you shall not fix punishment but shall indicate in your verdict only that you have found the Defendants, or either of them, guilty of this offense and return the verdict to the Court without deliberating on the question of punishment.

INSTRUCTION NO. 11

Trafficking in Cocaine, a Schedule II Controlled Substance

You will find the Defendants, Vernon Jackson and Jerry Jackson, or either of them, guilty under this Instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) that in this county on or about February 18, 1992, and before the finding of the indictment herein, Vernon Jackson and Jerry Jackson, or either of them, sold or delivered a quantity of cocaine, a schedule II controlled substance, to an undercover policeman;

(b) that Vernon Jackson and Jerry Jackson, or either of them, knew the substance being sold or delivered was cocaine;

AND

(c) that Vernon Jackson and Jerry Jackson, or either of them, had the cocaine in their possession with the intent of selling it to another person.

If you find the Defendants, Vernon Jackson and Jerry Jackson, or either of them, guilty under this Instruction, you shall not fix punishment but shall indicate in your verdict only that you have found the Defendants, or either of them, guilty of this offense and return the verdict to the Court without deliberating on the question of punishment.

INSTRUCTION NO. III

Unanimous Verdict

The verdict of the jury must be unanimous as to each Defendant and be signed by one of you as foreperson. You may use one of the forms provided at the end of these Instructions in writing your verdict.

INSTRUCTION NO. IV

Presumption of Innocence

The law presumes each Defendant to be innocent of a crime, and the indictments shall not be considered as evidence or as having any weight against them. You shall find the Defendants, Vernon Jackson, Perry Jackson, and Jerry Jackson, not guilty unless you are satisfied from the evidence alone and beyond a reasonable doubt that each of them is guilty. If upon the whole case you have a reasonable doubt that the Defendants or any of the Defendants are guilty, you shall find such Defendant not guilty.

VERDICT A

1. We, the jury, find the Defendant, Vernon Jackson, not guilty under Instruction No. I.

_____

Foreperson

OR

We, the jury, find the Defendant, Vernon Jackson, guilty of Trafficking in Cocaine, a Schedule II Controlled Substance, under Instruction No. I.

Joseph Dwight Lee

Foreperson

2. We, the jury, find the Defendant, Perry Jackson, not guilty under Instruction No. I.

_____

Foreperson

OR

We, the jury, find the Defendant, Perry Jackson, guilty of Trafficking in Cocaine, a Schedule II Controlled Substance, under Instruction No. I.

Joseph Dwight Lee

Foreperson

VERDICT B

1. We, the jury, find the Defendant, Vernon Jackson, not guilty under Instruction No. II.

_____

Foreperson

OR

We, the jury, find the Defendant, Vernon Jackson, guilty of Trafficking in Cocaine, a Schedule II Controlled Substance, under Instruction No. II.

Joseph Dwight Lee

Foreperson

2. We, the jury, find the Defendant, Jerry Jackson, not guilty under Instruction No. II.

_____

Foreperson

OR

We, the jury, find the Defendant, Jerry Jackson, guilty of Trafficking in Cocaine, a Schedule II Controlled Substance, under Instruction No. II.

Joseph Dwight Lee

Foreperson

COMMONWEALTH OF KENTUCKY
GRAVES CIRCUIT COURT
Indictment No. 92-CR-027
Indictment No. 92-CR-029
Indictment No. 92-CR-030

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON
PERRY JACKSON
VERNON JACKSON — DEFENDANTS

INSTRUCTIONS TO THE JURY
PENALTY PHASE

INSTRUCTION NO. I

You have tried the Defendants and have returned a verdict finding the Defendant, Vernon Jackson, guilty of 2 Counts of Trafficking in Cocaine, a Schedule II Controlled Substance, and finding the Defendant, Jerry Jackson, guilty of 1 Count of Trafficking in Cocaine, a Schedule II Controlled Substance, and finding the Defendant, Perry Jackson, guilty of 1 Count of Trafficking in Cocaine, a Schedule II Controlled Substance. From the evidence placed before you in that trial, you are acquainted with the facts and circumstances of the crimes. You have now received additional evidence from which you shall determine whether there are facts and circumstances bearing upon the question of punishment, following which you shall fix a sentence for each of the Defendants.

INSTRUCTION NO. II

Trafficking in Cocaine, a Schedule II Controlled Substance

Pursuant to the verdict returned by you finding the Defendant, Jerry Jackson, guilty of one Count of Trafficking in Cocaine, a Schedule II Controlled Substance, and under the evidence presented to you in both stages of this trial proceeding, you shall fix his punishment at confinement in the penitentiary for not less than five (5) years nor more than ten (10) years, at a fine of not less than $5,000 nor more than $10,000, or both fine and confinement in your discretion.

INSTRUCTION NO. III

Trafficking in Cocaine, a Schedule II Controlled Substance

Pursuant to the verdict returned by you finding the Defendant, Perry Jackson, guilty of one Count of Trafficking in Cocaine, a Schedule II Controlled Substance, and under the evidence presented to you in both stages of this trial proceeding, you shall fix his punishment at confinement in the penitentiary for not less than five (5) years nor more than ten (10) years, at a fine of not less than $5,000 nor more than $10,000, or both fine and confinement in your discretion.

INSTRUCTION NO. IV

Trafficking in Cocaine, a Schedule II Controlled Substance

Pursuant to the verdict returned by you finding the Defendant, Vernon Jackson, guilty of two Counts of Trafficking in Cocaine, a Schedule II Controlled Substance, and under the evidence presented to you in both stages of this trial proceeding, you shall fix punishment for each offense at confinement in the penitentiary for not less than five (5) years nor more than ten (10) years, at a fine of not less than $5,000 nor more than $10,000, or both fine and confinement in your discretion.

You shall further recommend to the Court whether the sentences on each Count as to Vernon Jackson shall run concurrently or consecutively. The sentences are concurrent when two or more sentences are served at the same time. Sentences are consecutive when they are served one after the other.

INSTRUCTION NO. V

Unanimous Verdict

The verdict of the Jury must be unanimous and be signed by one of you as foreperson. You may use one of the forms provided at the end of these instructions in writing your verdict.

VERDICT A

We, the jury, fix Perry Jackson's sentence at confinement in the penitentiary for a period of 10 years and/or at a fine of $ 0 .

Joseph Dwight Lee
Foreperson

VERDICT B

We, the jury, fix Jerry Jackson's sentence at confinement in the penitentiary for a period of 10 years and/or at a fine of $ 0 .

Joseph Dwight Lee
Foreperson

VERDICT C

We, the jury, fix Vernon Jackson's sentence under Instruction I (February 15, 1992) at confinement in the penitentiary for a period of 5 years and/or at a fine of $ 0 .

Joseph Dwight Lee
Foreperson

We, the jury, fix Vernon Jackson's sentence under Instruction II (February 18, 1992) at confinement in the penitentiary for a period of 5 years and/or at a fine of $ 0 .

Joseph Dwight Lee
Foreperson

We, the jury, recommend that the above sentences on Vernon Jackson shall be served:

____ concurrently

✓ consecutively

Joseph Dwight Lee
Foreperson

BLACKBURN CORRECTIONAL COMPLEX
3111 Spurr Road
Lexington, Kentucky 40511

Commonwealth of Kentucky DEPARTMENT OF CORRECTIONS

NOTICE OF DISCHARGE

F.B.I. Number 802 959 D Date 1-19-95

Date of Birth 3-29-31

The following named prisoner whose commitment record appears below is this day being discharged from this institution.

Name Jackson, Vernon Number 112933-AC-B

Date Received (originally) 1993-02-22 County Graves

Crime Trafficking Schedule II Controlled Substance Narcotic -

2 counts Ind. No. 92CR030

Sentence 10 Years

Discharged by: Parole Maximum Exp. Date: 2003-01-22

Remarks: Home placement: C/O Mae Nell Jackson (sister)

216 Pryor Street

Mayfield, Ky. 42066

Warden

Records Clerk

FILED
DATE 1-23-95
JOE [illegible], CLERK
GRAVES [illegible] COURT
BY [illegible]

Corrections Cabinet
Kentucky State Reformatory

LaGrange, Kentucky 40032

NOTICE OF DISCHARGE

F.B.I. Number 54677TAO Date Discharged 1/27/95

Date of Birth 6-29-53

The following named prisoner whose commitment record appears below is this day being discharged from this institution.

Name Perry Jackson Number #112931-L

Original Institution Commitment Number #112931-AC

Date Received (originally) 2/22/93 County Graves

Crime Traf. Sch. II Cont. Sub. - Nar.

(92CR029)

Sentence 10 Years

Discharged by: Parole MAX. EXP. DATE: 1/27/2003

Remarks: Barbara Jackson (Wife)

1023 Weda Circle

Mayfield, Ky. 42066

Records Clerk

Chief Records Officer

Chief Clerk 1/95

CIRCUIT COURT
D.C.

TR009

Corrections Cabinet
Kentucky State Reformatory

LaGrange, Kentucky 40032

NOTICE OF DISCHARGE

F.B.I. Number 471985v11 Date Discharged 12/20/94

Date of Birth 6-29-53

The following named prisoner whose commitment record appears below is this day being discharged from this institution.

Name Jerry Jackson Number #112932-L

Original Institution Commitment Number 112932-AC

Date Received (originally) 2/22/93 County Graves

Crime Trafficking Schedule II Controlled Substance - Narc. - (92CR027)

Sentence Ten (10) Years

Discharged by: Parole Maximum Expiration Date: 12-16-2002

Remarks: Georgia Jackson (mother)

1001 S. 14th Street

Mayfield, Ky. 42066

Records Clerk

Chief Records Clerk

Chief Clerk 12-27-94

CLERK

COUNTY CIRCUIT COURT

BY K.Riggs D.C.

TR009

COMMONWEALTH OF KENTUCKY

GRAVES CIRCUIT COURT

ENTERED
CIRCUIT COURT
GRAVES COUNTY CIRCUIT COURT
BY

Indictment No. 92-CR-027

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

JERRY JACKSON — DEFENDANT

Indictment No. 92-CR-029

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

PERRY JACKSON — DEFENDANT

Indictment No. 92-CR-030

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS.

VERNON JACKSON — DEFENDANT

ORDER

THIS MATTER is before the Court on Motion of the Defendants collectively, by counsel, Hon. Louis Mangrum, to compel the Commonwealth to release its statutory lien against the Defendant, Vernon Jackson's, real estate, said lien placed by the Commonwealth pursuant to the Forfeiture Statute, **KRS**

218A.405 et. seq. In addition, the Defendants, by counsel, also move the Court to determine the priority of liens regarding the Commonwealth's forfeiture lien, and Defendants' counsel's lien for legal services regarding subject real estate.

The Court, having considered arguments of counsel and the record herein, now **DENIES** the Motion, by counsel, to compel the Commonwealth to release its lien against the real estate of the Defendant, Vernon Jackson, pursuant to the forfeiture statute. The Court does reserve for future ruling the Defendant's Motion to establish priority of liens.

WITNESS MY HAND this 11th day of January, 1993.

John T. Daughaday, JUDGE
GRAVES CIRCUIT COURT

COPIES TO:

Hon. Richard Weisenberger
Hon. Louis Mangrum

YOUR MOTION FOR THE COURT TO REDUCE THE SENTENCE IN THIS CASE SET BY THE JURY IS DENIED. AT THIS TIME, THE COURT IS READY TO SENTENCE MR. JERRY JACKSON, MR. VERNON JACKSON AND MR. PERRY JACKSON. WOULD ALL THREE OF YOU PLEASE COME UP TO THE PODIUM?

MR. MANGRUM: I would ask The Court to let me call... I've got the witness here under subpoena - Ray Lawrence.

> THE COURT: NO, SIR. YOU HAVE HAD YOUR CHANCE TO PRESENT EVIDENCE AT THE TRIAL, MR. MANGRUM.

MR. MANGRUM: Well, I'd like for The Court to hear what he has to say...

> THE COURT: I DON'T WANT TO HEAR WHAT HE HAS TO SAY, MR. MANGRUM.

MR. MANGRUM:...what he has to say as newly discovered evidence.

> THE COURT: DENIED. DOES PROBATION AND PAROLE HAVE THE PSI REPORTS ON VERNON, PERRY AND JERRY JACKSON.

MR. BRADY: YES, Your Honor, I do.

TRANSCRIPT
OF
MR. KEN DARNELL

The following is a transcript of the testimony that Mr. Ken Darnell gave to the Graves County Grand Jury in March of 1992.

The witness, after being sworn in, testified as follows:

Q: Now, we have Perry Jackson who was charged on February 15th of 1992 for trafficking by selling a quantity of crack cocaine to an undercover agent. Just one count.

A: Yeah, he just sold once. On 2-15-92 at 6:30 p.m. he bought a $20 rock. (I'm trying to see the location, I'm sure we have it here. And I have to go back and look too, because after nine months I can't remember which ones happen when).

Q: Wasn't it in an area on Pryor street. Cause this happened at the Wishy Washy Laundry.

A: Well, actually, it was across from the Wishy Wash Laundry, there on the street still connected.

Q: and all these you say were taped?

A: Yeah, they're all audio-taped.

Q: Alright.

SET AN APPEAL BOND, IS THAT CORRECT?

MR. MANGRUM: I haven't filed the Notice of Appeal. I can't until the Judgment is entered.

THE COURT: WELL, I HAVE GOT ONE THAT HAS BEEN TENDERED TO BE FILED. IT IS NOTICE AND MOTION TO SET BOND PENDING APPEAL.

MR. MANGRUM: No I haven't tendered one.

THE COURT: WELL, I THOUGHT I SAW THE NOTICE OF APPEAL.

MR. MANGRUM: No, it was a motion. I have got a Motion pending for bond pending appeal.

THE COURT: MR. WEISENBERGER, WHAT DOES THE COMMONWEALTH RESPOND TO MR. MANGRUM'S MOTION TO CONSIDER AN APPEAL BOND IN THIS CASE?

MR. WEISENBERGER: Your Honor, the evidence in this case clearly shows that the entire family was ...certainly, these three defendants, were involved in drug selling and their case is no different from any other and I would not recommend that they be free on bond pending appeal.

THE COURT: ANY RESPONSE TO THAT, MR. MANGRUM?

MR. MANGRUM: Well, Your Honor, when they arrested them and searched everything, there wasn't any drugs found and they could have searched their home - every one of them. They all own homes and they didn't do that. They did search the car. Jerry gave them permission and they didn't find anything in the car. Now, obviously, when they found any drugs on these people - the only time they found them was when they had them

paid informers with them and they weren't searched - the officers weren't that went out with them, as The Court knows. Now, if they really thought these people were dealing in drugs, why didn't somebody search their property and find them? I mean, this is a mighty weak case as far as I'm concerned to have three people charged with dealing in drugs and Perry Jackson showed where he was at in New York and Philadelphia except for four days in there. They happen to get him when he, as a truck driver, wasn't away with a Bill of Laden but he couldn't have been ...he's testified that he was away from here for six weeks at a time. How could he be dealing in drugs in Graves County and out of the State driving a truck? It is ridiculous. I mean, this is a weak case - a very weak case. They didn't find nothing and they didn't search. They didn't think they'd find it. If they thought they would have found it, they would have searched them houses. You know that and they didn't.

THE COURT: MR. MANGRUM, I AM GOING TO SET AN APPEAL BOND FOR MR. VERNON JACKSON AT TWENTY THOUSAND DOLLARS, CASH OR PROPERTY; TEN THOUSAND DOLLARS, CASH OR PROPERTY FOR MR. JERRY JACKSON AND MR. PERRY JACKSON, EACH.

MR. MANGRUM: Well, now, Your Honor, there's one other thing that This Court needs to rule on. I have got a Motion pending before This Court for my lien on his property which is his bond security and is prior to forfeiture. Now, This Court needs to rule that it is or it isn't because...in the Judgment. I assume that This Court is going to make one Judgment out of this.

THE COURT: I AM GOING TO MAKE A JUDGMENT FOR EACH DEFENDANT.

MR. MANGRUM: Well, that will only require three different

Notices of Appeal.

THE COURT: I"M SORRY. I HAVE TO DO THAT. THERE ARE THREE SEPARATE CASES. I WILL HAVE TO ENTER A SEPARATE JUDGMENT FOR EACH DEFENDANT, MR. MANGRUM.

MR. MANGRUM: Well, I don't see why there couldn't be one Judgment involving the three.

THE COURT: WELL, THERE IS GOING TO BE A SEPARATE ONE FOR EACH DEFENDANT, MR. MANGRUM, SO, YOU WILL JUST HAVE TO FILE YOUR NOTICES OF APPEAL. MR. WEISENBERGER, HOW DOES THE COMMONWEALTH RESPOND TO THE PENDING MOTION REGARDING PRIORITY OR LIENS?

MR. WEISENBERGER: Your Honor, the State has filed its lien and it is premature at this time to exercise it because there has to be a final judgment. They have filed a Notice of Appeal so there is no way at this point that we can...

MR. MANGRUM: I haven't filed a Notice of Appeal yet.

MR. WEISENBERGER: Well, but, I mean...

MR. MANGRUM: But the Motion. I've got the Motion.

MR. WEISENBERGER: The order is not filed.

MR. MANGRUM: Your Honor, the Motion is pending before This Court and This Court knows as well as Mr. Weisenberger that a final judgment in this case includes all of the motions that are pending before it. And if The Court doesn't grant the motion, it is denying it. But I want it strictly set out in there what The Court is doing.

MR. WEISENBERGER: All the State can do is file the lien which we have done. The case has to be final before the State can proceed with forfeiture. We just can't do it now.

MR. MANGRUM: It doesn't have to be final before This Court determines the priority of liens as between my lien and their lien and the Statute...my Statute... the Kentucky Statute on attorneys give us a lien without giving notice. They have to give notice. Now, when they gave notice, they knew that I was representing Mr. Jackson. They knew that I was his lawyer. Now, they can't, by giving notice then, get a lien prior to mine.

THE COURT: HAD YOU ALREADY FILED A LIEN?

MR. MANGRUM: I don't have to. I get one by Statute without filing.

THE COURT: YOU HAVE FILED NOTHING?

MR. MANGRUM: Obviously, I...no, I don't have to and I'm not going to go down there and clutter up my client's property with a lien on it when I don't have to.

THE COURT: MR. WEISENBERGER, HOW DO YOU RESPOND TO THAT?

MR. WEISENBERGER: Well, he is saying that all lawyers have liens against property.

MR. MANGRUM: That's right. That's right. We do, against property.

MR. WEISENBERGER: The Statute clearly sets out what the Commonwealth should do and I think we have done it.

MR. MANGRUM: But mine is prior, though, Your Honor. That's what I'm saying.

MR. WEISENBERGER: That's a matter of argument.

MR. MANGRUM: Well, no, it's not.

MR. WEISENBERGER: You have already argued that one time up here.

MR. MANGRUM: And The Court said he's pass it to the merits.

MR. WEISENBERGER: That's right, but the arguments were made that day.

MR. MANGRUM: Well, the argument is the same as I made there now. I got my lien the minute he employed me and you got your lien no quicker than you filed your notice and when you filed your notice, you knew that I had a lien.

MR. WEISENBERGER: We offered to sell the house - to have the house sold and put the money in escrow pending the outcome of the case and you didn't want to do that.

MR. MANGRUM: Well, as I say, it involves his wife. She owns half of it.

> THE COURT: ALRIGHT. MR. MANGRUM, YOU CAN SUBMIT A MEMORANDUM TO THE COURT ARGUING YOUR POSITION AND MR. WEISENBERGER, THE COMMONWEALTH NEEDS TO SUBMIT ONE AS TO WHETHER OR NOT THE FACT THAT YOU FILED THE NOTICE UNDER THE STATUTE AND CREATED THE LIEN UNDER THE FORFEITURE STATUTE ON DRUG CASES WOULD TAKE PRIORITY IN THIS CASE AND I WILL GIVE YOU EACH FIFTEEN DAYS TO SUBMIT THAT MEMORANDUM TO ME AND THEN I WILL ENTER A WRITTEN ORDER RULING ON THE PRIORITY OF THE LIENS.

MR. WEISENBERGER: Let me ask this: in view of the...

MR. MANGRUM: Well, the Judgment...

MR. WEISENBERGER: In view of the upcoming schedule, could we have a little more than fifteen days?

THE COURT: HOW MUCH TIME WOULD YOU LIKE TO HAVE, MR. WEISENBERGER?

MR. WEISENBERGER: At least twenty-one.

THE COURT: ALRIGHT. YOU MAY HAVE...

MR. MANGRUM: Your Honor, the Final Judgment here can't be entered until that's done then, because it will automatically do it. It's the law.

THE COURT: WELL, MR. MANGRUM, I FIND THAT THE COMMONWEALTH'S LIEN IS SUPERIOR. YOUR MOTION FOR A LIEN SUPERIOR TO THE COMMONWEALTH'S ON THE FORFEITURE IS DENIED.

MR. MANGRUM: Well, I'll have to take that up...

THE COURT: ANY OTHER MATTERS?

MR. MANGRUM: No. No, not if that's the way The Court is going to rule.

THE COURT: HOW MUCH JAIL CREDIT TIME ARE THEY ENTITLED TO RECEIVE MR. BRADY?

MR. BRADY: Vernon Jackson has thirty days; Jerry Jackson has sixty-six days and Perry Jackson has twenty-five days.

THE COURT: ALRIGHT. I WILL ENTER THOSE ON THE JUDGMENTS AND I WILL DO A WRITTEN ORDER RULING ON THE PRIORITY OF THE LIENS.

MR. MANGRUM: Now...well, did you... now, Mr. Vernon Jackson has got that bond up for twenty thousand.

MR. JACKSON: No, we just signed a property bond.

THE COURT: WELL, YOU HAVE GOT A PROBLEM NOW.